

SUPERIOR COURT OF PENNSYLVANIA
Vol. II
TRANSCRIPT OF RECORD

(Pages 341 to 676)

Supreme Court of the United States

OCTOBER TERM, 1955

No. 323

UNITED STATES OF AMERICA, EX REL. DAVID
DARCY, PETITIONER,

vs.

EARL D. HANDY, WARDEN OF BUCKS COUNTY
PRISON, ET AL.

A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 15, 1955

CERTIORARI GRANTED OCTOBER 14, 1955

TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| I. Relevant Docket Entries | 1a |
| II. Pleadings..... | 5a |
| (1) Petition for Writ of Habeas Corpus and Rule to Show Cause | 5a |
| (2) Answer of John W. Claudy, Warden of Western State Penitentiary, to Petition for Writ of Habeas Corpus | 16a |
| III. Transcript of Hearing Upon Petition..... | 25a |
| (1) Testimony | 25a |
| RELATOR'S WITNESSES: | |
| Walter Schroeder—Direct Examination | 91a |
| Recalled—Direct Examination | 134a |
| Recalled—Cross-examination | 155a |
| Recalled—Re-direct Examination | 289a |
| Recalled—Re-cross Examination | 342a |
| Recalled—Re-direct Examination | 349a |
| Reverend Frank J. Damrosh—Direct Examina- tion | 124a |
| Cross-examination | 130a |
| Reverend William Babinsky—Direct | 159a |
| Cross-examination | 167a |
| Re-direct Examination | 180a |
| G. Cole Farrier—Direct Examination | 181a |
| Cross-examination | 192a |

TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| Re-direct Examination | 198a |
| Re-cross Examination | 203a |
| Re-direct Examination | 204a |
| A. Russell Thomas—Direct Examination | 207a |
| Cross-examination | 228a |
| Re-direct Examination | 236a |
| Re-cross Examination | 243a |
| Re-direct Examination | 245a |
| Recalled—Re-direct Examination | 251a |
| Recalled—Re-direct Examination | 382a |
| Recalled—Re-cross Examination | 384a |
| Recalled—Re-direct Examination | 384a |
| Recalled—Re-direct Examination | 421a |
| Recalled—Re-cross Examination | 426a |
| Recalled—Re-direct Examination | 427a |
| Recalled—Re-cross Examination | 429a |
| Recalled—Re-direct Examination | 430a |
| William Lester Trauch—Direct Examination | 246a |
| Cross-examination | 247a |
| Re-direct Examination | 249a |
| Re-cross Examination | 250a |
| Recalled—Re-direct Examination | 420a |
| Doctor Carl J. Hoffman—Direct Examination | 253a |
| Cross-examination | 261a |
| Re-direct Examination | 271a |
| John J. Kerrigan—Direct Examination | 275a |
| George A. Koehler—Direct Examination | 281a |
| Cross-examination | 285a |
| Re-direct Examination | 286a |
| William A. Lynch—Direct Examination | 287a |
| Cross-examination | 288a |

TABLE OF CONTENTS

| | PAGE |
|--|------|
| Howard R. Price—Direct Examination | 314a |
| Cross-examination | 320a |
| Re-direct Examination | 328a |
| Re-cross Examination | 340a |
| Mrs. Elizabeth M. Degan—Direct Examination | 350a |
| Cross-examination | 362a |
| Matthew L. Godshall—Direct Examination | 363a |
| Cross-examination | 376a |
| Re-direct Examination | 377a |
| Re-cross Examination | 379a |
| Re-direct Examination | 380a |
| Recalled—Re-direct Examination | 385a |
| Recalled—Re-cross Examination | 385a |
| Serrell Detlefson—Direct Examination | 385a |
| Cross-examination | 387a |
| Re-direct Examination | 388a |
| George Fox—Direct Examination | 389a |
| Cross-examination | 391a |
| Miss A. Patterson—Direct | 392a |
| Cross-examination | 398a |
| Re-direct Examination | 416a |
| Re-cross Examination | 416a |
| Re-direct Examination | 418a |
| Knickerbocker Davis ² —Direct Examination | 431a |
| Cross-examination | 449a |
| Re-direct Examination | 459a |
| Re-cross Examination | 470a |
| Re-direct Examination | 471a |
| Miss Marion R. Ford—Direct Examination | 474a |
| Cross-examination | 489a |

TABLE OF CONTENTS

| | PAGE |
|---|------|
| Re-direct Examination | 534a |
| Re-cross Examination | 536a |
| Joseph Darcy—Direct Examination | 537a |
| Cross-examination | 544a |
| Re-direct Examination | 556a |
| Re-cross Examination | 568a |
| Mrs. Inez Darcy Heckman—Direct Examination | 585a |
| Cross-examination | 594a |
| Miss Margaret C. Gordon—Direct | 611a |
| Cross-examination | 618a |
| RESPONDENT'S WITNESSES: | |
| Clarence H. Dannenhowe—Direct | 636a |
| Cross-examination | 652a |
| Mrs. Ethel M. Van Sant—Direct Examination | 674a |
| Cross-examination | 685a |
| Gideon S. Gahman—Direct Examination | 689a |
| Cross-examination | 696a |
| Corporal Harold Dando—Direct Examination | 701a |
| Cross-examination | 709a |
| Felix R. Gowan—Direct Examination | 710a |
| Cross-examination | 713a |
| Clarence Irwin—Direct Examination | 714a |
| Cross-examination | 717a |
| Attorney Willard S. Curtin—Direct Examination | 720a |
| Cross-examination | 736a |
| Re-direct Examination | 793a |
| Re-cross Examination | 795a |

TABLE OF CONTENTS

| | PAGE |
|---|------|
| Re-direct Examination | 796a |
| Recalled—Re-cross Examination | 916a |
| Recalled—Re-direct Examination | 928a |
| Ernest M. Leedom—Direct Examination | 796a |
| Cross-examination | 802a |
| Direct Examination | 808a |
| Cross-examination | 815a |
| Re-direct Examination | 822a |
| Edward F. Wunsch—Direct Examination | 830a |
| Earl D. Handy—Direct Examination | 836a |
| Raymond C. Reed—Direct Examination | 843a |
| Cross-examination | 848a |
| Re-direct Examination | 853a |
| Re-cross Examination | 854a |
| Honorable Edward G. Biester—Direct Examination | 870a |
| Cross-examination | 885a |
| (2) Exhibits | 943a |
| (a) RELATOR'S EXHIBITS: | |
| No. 10(a), Oyer and Terminer Criminal Docket, Bucks County, 1943 | 943a |
| No. 10(b), Oyer and Terminer Criminal Docket, Bucks County, 1943 | 946a |
| No. 10(c), Oyer and Terminer Criminal Docket, Bucks County, 1943 | 948a |
| No. 10(d), Oyer and Terminer Criminal Docket, Bucks County, 1943 | 951a |

• TABLE OF CONTENTS

| | PAGE |
|---|------|
| No. 12, Doylestown Daily Intelligencer, December 23, 1947 | 953a |
| No. 13, Doylestown Daily Intelligencer, December 23, 1947 | 955a |
| No. 14, Doylestown Daily Intelligencer, December 24, 1947 | 959a |
| No. 15, Doylestown Daily Intelligencer, December 24; 1947 | 961a |
| No. 16, Doylestown Daily Intelligencer, December 26, 1947 | 964a |
| No. 17, Doylestown Daily Intelligencer, December 26, 1947 | 966a |
| No. 18, Doylestown Daily Intelligencer, December 27, 1947 | 967a |
| No. 19, Doylestown Daily Intelligencer, December 27, 1947 | 969a |
| No. 20, Doylestown Daily Intelligencer, December 27, 1947 (Editorial) | 979a |
| No. 21, Doylestown Daily Intelligencer, December 29, 1947 | 972a |
| No. 22, Doylestown Daily Intelligencer, December 31, 1947 (Editorial) | 974a |
| No. 23, Doylestown Daily Intelligencer, January 5, 1948 | 976a |
| No. 24, Doylestown Daily Intelligencer, January 5, 1948 | 977a |
| No. 25, Doylestown Daily Intelligencer, January 16, 1948 | 979a |

TABLE OF CONTENTS

| | PAGE |
|---|------|
| No. 28, Doylestown Daily Intelligencer, January 27, 1948 | 980a |
| No. 29, Doylestown Daily Intelligencer, January 27, 1948 | 981a |
| No. 31, Doylestown Daily Intelligencer, February 2, 1948 (Editorial) | 982a |
| No. 34, Doylestown Daily Intelligencer, February 6, 1948 | 984a |
| No. 34, Doylestown Daily Intelligencer, February 6, 1948 | 986a |
| No. 35, Doylestown Daily Intelligencer, February 6, 1948 | 988a |
| No. 36, Doylestown Daily Intelligencer, February 10, 1948 | 989a |
| No. 37, Doylestown Daily Intelligencer, February 10, 1948 | 991a |
| No. 38, Doylestown Daily Intelligencer, February 11, 1948 | 992a |
| No. 40, Doylestown Daily Intelligencer, February 16, 1948 | 994a |
| No. 40, Doylestown Daily Intelligencer, February 16, 1948 | 995a |
| No. 41, Doylestown Daily Intelligencer, February 16, 1948 | 997a |
| No. 42, Doylestown Daily Intelligencer, February 18, 1948 (Editorial) | 998a |
| No. 43, Doylestown Daily Intelligencer, March 1, 1948 | 999a |

TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| No. 46, Doylestown Daily Intelligencer, April 2, 1948 | 1001a |
| No. 48, Doylestown Daily Intelligencer, April 17, 1948 (Editorial) | 1003a |
| No. 49, Doylestown Daily Intelligencer, May 7, 1948 (Editorial) | 1005a |
| No. 51, Doylestown Daily Intelligencer, May 14, 1948 | 1007a |
| No. 55, Doylestown Daily Intelligencer, May 24, 1948 | 1009a |
| No. 56, Doylestown Daily Intelligencer, May 24, 1948 | 1011a |
| No. 57, Doylestown Daily Intelligencer, May 25, 1948 | 1013a |
| No. 58, Doylestown Daily Intelligencer, May 25, 1948 | 1015a |
| No. 57, Doylestown Daily Intelligencer, May 25, 1948 | 1018a |
| No. 59, Doylestown Daily Intelligencer, May 26, 1948 | 1019a |
| No. 60, Doylestown Daily Intelligencer, May 26, 1948 | 1020a |
| No. 61, Doylestown Daily Intelligencer, May 27, 1948 | 1024a |
| No. 61, Doylestown Daily Intelligencer, May 27, 1948 | 1025a |
| No. 62, Doylestown Daily Intelligencer, May 27, 1948 | 1026a |

TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| No. 63, Doylestown Daily Intelligencer, May 28, 1948 | 1031a |
| No. 64, Doylestown Daily Intelligencer, May 28, 1948 | 1033a |
| No. 65, Doylestown Daily Intelligencer, May 29, 1948 | 1038a |
| No. 66, Doylestown Daily Intelligencer, May 29, 1948 | 1040a |
| No. 67, Doylestown Daily Intelligencer, June 1, 1948 | 1044a |
| No. 68, Doylestown Daily Intelligencer, June 1, 1948 | 1046a |
| No. 70, Doylestown Daily Intelligencer, June 2, 1948 | 1048a |
| No. 71, Doylestown Daily Intelligencer, June 2, 1948 | 1050a |
| No. 72, Doylestown Daily Intelligencer, June 3, 1948 | 1055a |
| No. 72, Doylestown Daily Intelligencer, June 3, 1948 | 1056a |
| No. 73, Doylestown Daily Intelligencer, June 3, 1948 | 1058a |
| No. 75, Doylestown Daily Intelligencer, June 4, 1948 | 1062a |
| No. 76, Doylestown Daily Intelligencer, June 4, 1948 | 1064a |
| No. 77, Doylestown Daily Intelligencer, June 4, 1948 | 1067a |

TABLE OF CONTENTS

| | PAGE |
|---|-------|
| No. 78, Doylestown Daily Intelligencer, June 5, 1948 | 1068a |
| No. 79, Doylestown Dai! Intelligencer, June 5, 1948 | 1069a |
| No. 78, Doylestown Daily Intelligencer, June 5, 1948 | 1070a |
| No. 78, Doylestown Daily Intelligencer, June 5, 1948 | 1071a |
| No. 79, Doylestown Daily Intelligencer, June 5, 1948 | 1073a |
| No. 79, Doylestown Daily Intelligencer, June 5, 1948 | 1074a |
| No. 80, Doylestown Daily Intelligencer, June 7, 1948 | 1075a |
| No. 81, Doylestown Daily Intelligencer, June 7, 1948 | 1077a |
| No. 82, Doylestown Daily Intelligencer, June 8, 1948 | 1079a |
| No. 82, Doylestown Daily Intelligencer, June 8, 1948 | 1080a |
| No. 83, Doylestown Daily Intelligencer, June 8, 1948 | 1082a |
| No. 84, Doylestown Daily Intelligencer, June 8, 1948 (Guest Editorial) | 1086a |
| No. 85, Doylestown Daiy Intelligencer, June 9, 1948 | 1087a |
| No. 85, Doylestown Daily Intelligencer, June 9, 1948 | 1088a |

TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| No. 86, Doylestown Daily Intelligencer, June 9, 1948 | 1090a |
| No. 90, Doylestown Daily Intelligencer, June 10, 1948 (Editorial) | 1093a |
| No. 94, Doylestown Daily Intelligencer, June 12, 1948 | 1094a |
| No. 95, Doylestown Daily Intelligencer, June 12, 1948 | 1096a |
| No. 94, Doylestown Daily Intelligencer, June 12, 1948 | 1097a |
| No. 96, Doylestown Daily Intelligencer, June 12, 1948 | 1098a |
| No. 101, Doylestown Daily Intelligencer, June 15, 1948 | 1099a |
| No. 102, Doylestown Daily Intelligencer, June 15, 1948 | 1101a |
| No. 105, Doylestown Daily Intelligencer, June 17, 1948 (Editorial) | 1103a |
| No. 106, Doylestown Daily Intelligencer, June 19, 1948 | 1105a |
| No. 107, Newtown Enterprise, January 1, 1948 | 1106a |
| No. 108, Newtown Enterprise, January 1, 1948 | 1108a |
| No. 109, Newtown Enterprise, June 3, 1948 .. | 1111a |
| No. 110, Newtown Enterprise, June 3, 1948 .. | 1113a |
| No. 115(C), Criminal Minutes, Bucks County, 1948 | 1117a |
| No. 123(A), Quakertown Free Press, May 20, 1948 | 1123a |

TABLE OF CONTENTS

| | PAGE |
|--|-----------|
| No. 123 (C), Quakertown Free Press, May 27, 1948 | 1125a |
| No. 123 (C), Quakertown Free Press, May 27, 1948 | 1126a |
| No. 123 (D), Quakertown Free Press, June 10, 1948 | 1127a |
| No. 123 (E), Quakertown Free Press, June 10, 1948 | 1129 |
| (b) RESPONDENTS' EXHIBITS: | |
| No. 5, Certificate of Judge Hiram H. Keller .. | 1133a |
| IV. Excerpts from Transcript of Trial of Commonwealth vs. David Darcy, June 7, 1948 | 1141a |
| (1) Voir Dire Examination of Jurors | 1141a |
| (a) Harry T. Westlake (Relator's Exhibit No. 5A) | 1141a |
| (b) William H. Slaughter (Relator's Exhibit No. 5B) | 1143a |
| (2) Judge Calvin S. Boyer's Participation in the Trial (Relator's Exhibit No. 5E) | 1144a |
| (3) Judge Hiram H. Keller's Charge and Objec- tion of District Attorney Edward G. Biester (Relator's Exhibit 5E) | 1146a |
| V. Requests for Findings of Fact and Conclusions of Law | 1150a |
| (1) Relator's Request | 1150a |
| (2) Respondents' Request | 1180a |

TABLE OF CONTENTS

| | PAGE |
|--|---------------------|
| VI. Opinions of United States District Court | 1191a |
| (1) Opinion Denying Petition | 1191a |
| (2) Appendix to Opinion | 1242a |
| VII. Order of United States District Court Denying Petition | 1244a |
| VIII. Certificate of Probable Cause | 1244a |
| | Original Print |
| Proceedings in the U.S.C.A. for the Third Circuit | 1245 1245 |
| Opinion, Hastie, J. | 1245 1245 |
| Dissenting opinion, Kalodner | 1252 1251 |
| Dissenting opinion, Biggs, C. J. | 1265 1265 |
| Judgment | 1267 1267 |
| Petition for rehearing (omitted in printing) | |
| Order denying rehearing | 1268 1267 |
| Order staying issuance of mandate | 1292 1268 |
| Clerk's certificate (omitted in printing) | |
| Order allowing certiorari | 1297 1269 |

Volume II

BY MR. MARGIOTTI: I haven't seen the Mandate. I don't know if we are permitted to see it —

BY JUDGE MURPHY: You don't know what is in the Mandate. Didn't you get a copy of it?

BY MR. MARGIOTTI: I did not.

(328) BY JUDGE MURPHY: Well, I am astonished —

BY MR. MARGIOTTI: I just asked counsel for the Commonwealth and they said the same thing.

BY JUDGE MURPHY: I think I am learning some new law than I learned at Penn.

BY MR. MARGIOTTI: I think we should have had a Mandate.

BY JUDGE MURPHY: The Mandate is a public record. It has been on file from the date it came down and it is a public record and —

BY JUDGE WATSON: I think you would have been interested in your victory.

BY MR. MARGIOTTI: I was.

BY JUDGE WATSON: You were not interested in the details of the victory —

Discussion.

BY MR. MARGIOTTI: They never give me one of these.

BY JUDGE WATSON: They didn't give me one. I had to send down to the Clerk's office to get it.

BY JUDGE MURPHY: Apart from that, Mr. Margiotti, counsel in the case, has never seen the Mandate. That is the present situation.

We still have seven minutes to go. Who do you call, (329) gentlemen?

BY MR. MARGIOTTI: If Your Honor please, I have a motion to make.

If the Court please, I would like to move to amend the Petition for Writ of Habeas Corpus in this case to strike out, for instance, on Page 5 "That the hysteria and prejudice, which swept the town . . ." be stricken out and instead thereof to add in place of "the town," "the County."

BY MR. RYDER: We object to the amendment.

BY JUDGE MURPHY: Anything else?

BY MR. RYDER: It is rather late, it seems to me, to make such an amendment as that.

BY JUDGE MURPHY: Anything else, gentlemen?

BY JUDGE WATSON: Anything else?

BY MR. MARGIOTTI: That is the only thing I have, Your Honor.

BY JUDGE MURPHY: Well, we had agreed so that Mr.

Discussion

Margiotti could leave at 2:30 to adjourn at 2:30, so we have consumed four of the minutes. There are only three minutes left.

BY MR. MARGIOTTI: I am willing to stay ten more minutes.

BY JUDGE MURPHY: I know you are.

The Court will now adjourn until 10:00 o'clock Tuesday (330) morning. The Court will take the motion under advisement. We will not sit on Monday because we have Argument Court, Call of the List and Grand Jury. We will start on Tuesday and we will go on until it is concluded and stay at it notwithstanding we have our regular work of Term of Court.

BY JUDGE WATSON: We are holding up the work on the Term of Court. We are giving every preference to this particular case.

BY JUDGE MURPHY: We hope from Tuesday on you will move a little more expeditiously.

(Chambers)

BY JUDGE MURPHY: On the 5th day of March 1954 an order was signed by this Court directing the Honorable Frank F. Truscott, Attorney General of Pennsylvania, by virtue of his office, to produce the person of David Darcy on Thursday, March 11, 1954 at 10:00 A.M. at the United States Court House at Scranton, Pennsylvania, there to remain until further order of this Court. It is now Saturday afternoon at 2:30 and the Relator has not completed placing his testimony upon the record, the Warden has asked the Court whether or not it is the Court's judgment that the prisoner should remain and be

Discussion

lodged at the Lackawanna County Jail over the week-end in view of him having to be here on Tuesday morning instead of being returned to Rockview and then back Tuesday morning; and our judgment is that the order of the Court requires that he continue to remain at Scranton instead of being returned to Rockview and then returned back to Scranton. Is that clear?

(331). You have a Court interpretation to protect you and the order is there.

(End of Chambers.)

(Court adjourns for the day.)

(Court resumes on Tuesday morning, March 16, 1954 with all parties, including the Relator, David D'arey, present in Court.)

BY MR. MARGIOTTI: May I withdraw that motion which I made at the close of the last session for the reason I am going to present a motion in writing and under oath which I think is the proper way to do it.

BY MR. VAN ARTSDALEN: Yesterday afternoon a local doctor, Doctor Laundenslager, handed this envelope sealed to me and requested that I hand it to the Court. I believe it refers to one of the witnesses that was subpoenaed for counsel for the Relator.

BY MR. MARGIOTTI: If Your Honor please, while the certificate is not in proper form, I may state to the Court that Mr. Pannell tells me that this is a fact and, therefore, we are not going to question the contents of the certificate even though unsworn to.

BY JUDGE MURPHY: The record shows nothing so far.

Discussion

BY MR. MARGIOTTI: That is right.

Your Honor, we have had some pictures taken of the court-room in view of the fact that some witnesses will appear who will testify concerning the presence of Judge Boyer in the Court at the time of the Daréy trial as well as his location at various times. We think the pictures may be of help to (332) Your Honor, and for that reason I offer them in evidence and the District Attorney I think can state on the record what they show and I will agree to it without calling a photographer in the interest of saving time.

(Photograph marked "Relator's Exhibit No. 118.")

BY MR. VAN ARTSDALEN: We will stipulate that "Relator's Exhibit No. 118" is a photograph of the Courtroom No. 1 of the Bucks County Courthouse of Doylestown.

BY MR. MARGIOTTI: Does it show the main aisle coming from the outside entrance and approaching the bench and also shows to the right the six chairs of the jurors; is that right?

BY MR. VAN ARTSDALEN: That appears to be correct.

BY MR. MARGIOTTI: We offer it in evidence, Your Honor.

BY JUDGE MURPHY: It will be received.

BY MR. MARGIOTTI: Now "Relator's Exhibit No. 119"

(Exhibit marked "Relator's Exhibit No. 119.")

BY MR. VAN ARTSDALEN: That also appears to be a photograph of the Bucks County Courthouse Courtroom No. 1 at Doylestown, a view taken from the right-hand side of the

Discussion

courtroom as the Court would sit and a view across toward the jury seats.

BY MR. MARGIOTTI: And showing the jury seats, is that right?

BY MR. VAN ARTSDALEN: It shows some of the jury seats, yes.

BY MR. MARGIOTTI: (333) Doesn't it show them all?

BY MR. VAN ARTSDALEN: It shows twelve jury seats.

BY MR. MARGIOTTI: It also shows places for spectators in the back.

BY MR. VAN ARTSDALEN: We will agree it shows in the back. Whether it is spectators or not, we will not say.

BY MR. MARGIOTTI: We offer it in evidence.

BY JUDGE MURPHY: It will be received.

(Exhibit marked "Relator's Exhibit No. 120.")

BY MR. VAN ARTSDALEN: "Relator's Exhibit No. 120" is another view of the same courtroom. That is all I can say. I think it will speak for itself where it was taken from.

BY MR. MARGIOTTI: Well, it shows the jurors' chairs that sat on the trial as well as the prosecution chairs and tables; does it not?

BY MR. VAN ARTSDALEN: Well, the defense counsel tables —

Discussion

BY MR. MARGIOTTI: Which is the defense counsel tables?

BY MR. VAN ARTSDALEN: Right here. And also chairs and tables that are constantly used by the attorneys and members of the press.

BY MR. MARGIOTTI: Let's mark that what tables they are so that the Court can follow it.

(334) BY JUDGE MURPHY: On your "Exhibit 118" there are two rows of chairs there. What are those chairs for?

BY MR. VAN ARTSDALEN: Those rows of chairs, Your Honor, are for the members of the bar that are not trying the case, and the table is sometimes also used by members of the press.

BY JUDGE MURPHY: Then the two tables on the right on "Exhibit No. 118" as I face the picture would be over near the jury; that is counsel for the plaintiff and counsel for the Commonwealth?

BY MR. VAN ARTSDALEN: Yes sir.

BY MR. MARGIOTTI: The front one is the Commonwealth's; the rear one is the defense.

The District Attorney has marked what each table is, and "Commonwealth's Exhibit No. 120," which apparently is a picture taken from the—at about the front of the bench I would say—is that right—shooting toward the left—

BY MR. VAN ARTSDALEN: I don't believe that is quite correct.

Discussion

BY MR. MARGIOTTI: Say shooting from the right of the bench toward the left —

BY MR. VAN ARTSDALEN: Yes.

BY MR. MARGIOTTI: And shows the jury chairs as well as benches behind it —

BY MR. RYDER: (335) You called it the Commonwealth's exhibit, Mr. Margiotti.

BY MR. MARGIOTTI: I called it "Commonwealth's Exhibit No. 120." I meant "Relator's Exhibit No. 120."

(Exhibits marked "Relator's Exhibits Nos. 121 and 122," respectively.)

BY MR. MARGIOTTI: We have one exhibit marked "Relator's Exhibit No. 122," Your Honor, which I would like to withdraw because quite apparently it is a duplicate of one of the ones that is already before Your Honor. May I withdraw it?

BY JUDGE MURPHY: Of course.

What about "Exhibit No. 121?"

BY MR. MARGIOTTI: We have agreed on "Relator's Exhibit No. 121," which shows the District Attorney's table, defense table, and it is taken from a position back of where the jurors sit — taken in just the opposite direction.

Walter Schroeder—Re-direct

MR. WALTER SCHROEDER, recalled.

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Now, Mr. Schroeder, when you were last on the chair as a witness you spoke of the White matter and the Court expressed an interest to ascertain whether or not there was any record about that White matter; do you recall that?

BY JUDGE MURPHY: (336) The White matter —

BY MR. MARGIOTTI: The case that happened on the 12th of June.

You asked me if there was any reference to it in the record anywhere, and I am going to ask him if he knows.

BY JUDGE MURPHY: You mean on the sentencing day somebody from Philadelphia was sentenced, that his name was White; is that it?

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: You go ahead; we will rule.

BY MR. MARGIOTTI:

Q. Do you know what I am talking about, Mr. Schroeder?

A. No sir, I don't recall the statement made about Mr. White on any particular day while I was on the stand.

Q. Do you recall on June 12 Judge Boyer sentencing a young man named White from Philadelphia who had pleaded guilty to larceny?

A. Well, some of the records are here of that particular day. I had these dockets read. I didn't have a chance to look at it since I received the subpoena from him.

Q. What I have in mind—do you know of any records at all in your office where there is any reference to a remark made by Judge Boyer in connection with that case?

A. No sir. I looked over the record. This is the only record I have in the office.

BY MR. MARGIOTTI: That answers the question and I am through.

RE-CROSS EXAMINATION.

BY MR. VAN ARTSDALEN: (337) No questions.

(Witness excused.)

MRS. ELIZABETH M. DEGAN, called and sworn on behalf of the Relator, on direct- and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mrs. Degán, where do you reside?

A. Up at Revere, Pennsylvania.

Q. During the year 1948 where were you employed?

A. In the Quarter Sessions Office in the County of Bucks.

Q. What was your occupation?

A. I was a clerk there.

Elizabeth M. Degan—Direct

Q. A clerk. And as a clerk did you have any duty in connection with either the Darcy or the Foster and Zietz trial?

A. Yes, I did.

Q. Will you state whether or not—state what those duties were.

A. Well, I docketed—I wrote the docket up, the entries of Court I went in Court —

BY JUDGE WATSON: Won't the witness speak a little louder? It is difficult for me to hear and my hearing is very good.

BY MR. MARGIOTTI:

Q. Did you hear the Court?

A. I took down some of the entries that I docketed into our Court docket.

Q. Was that in connection with your duties?

A. Yes sir.

Q. I am going to show you an exhibit here marked "Relator's Exhibit No. 116." I want you to look at that exhibit. Take out the papers which are in there and tell me whether any of those (338) papers are in your handwriting.

A. Yes, they are.

Q. Will you tell me what is in your handwriting so that we can identify them?

A. Well, on the trial sheet I mentioned the Judge, the District Attorney, the defense attorneys, and during the trial I took down the jury as they were charged; I took down the beginning witnesses; I took down adjournment on one particular day here; then I took down some more jurors, adjournments, jurors, the arraignment of the defendant and adjournments. That's about all.

Q. In other words, all those sheets, irrespective of what they are, are in your handwriting?

A. Not all of these sheets. These aren't all in my handwriting.

Q. Will you eliminate the ones which are not in your handwriting?

A. You mean I should take them apart — — —

Q. Hand them to me and we will work out some way of designating them for the record.

A. On some pages there is my handwriting and other handwriting. I mean I may have gone down a page and not quite finished it. It would be pretty hard to do.

Q. Let me take these white sheets out. They are attached?

A. Yes sir.

Q. I am calling your attention particularly to the yellow sheets and I am going to take a third yellow sheet, the first number at the top, with reference to who was presiding; do you notice that?

A. Yes.

Q. Whose handwriting is that?

A. I believe, sir, that is Mr. Godshall's.

Q. And who is he?

(339) A. He was the Clerk of Quarter Sessions at that time.

Q. I see. Is he here?

A. Yes sir.

Q. I am showing you another sheet marked "6/10/48." It has a reference as to who was presiding. Whose handwriting is that?

A. It looks like Mr. Godshall's.

Q. It isn't yours?

A. No sir.

Q. I show you another sheet marked "6/11/48" with reference as to who was presiding right at the top of the page. Is that your handwriting?

A. No sir.

Q. Whose is that, do you know?

Elizabeth M. Degan—Direct

A. I believe it is Mr. Godshall's.

Q. I show you another sheet marked "6-12-48." Is that in your handwriting at the top of the page?

A. No sir.

Q. Is your answer the same as to whose that is?

A. Yes sir.

Q. What was the purpose of keeping these yellow sheets, Mrs. Degan, if you know?

A. Well, from those I wrote up the docket.

Q. You wrote up the docket?

A. Yes.

Q. And if you wrote up the docket did you observe that in these yellow sheets on several occasions there was a reference to the fact that those who were presiding consisted of Judges Keller and Boyer?

A. Yes sir.

Q. Did you put that in the docket?

A. Why, I may have. I don't just recall. I may have put it in.

(349) Q. I want to be frank with you. We find that in the minute book that there is some question about the docket. That is the reason I am asking you about the docket. Would you like to see the docket?

A. I could answer it better, yes.

Q. I show you "Relator's—Mrs. Degan. I show you the original docket entries, of which we have a copy marked "Relator's Exhibit No. 4," and will you state whether or not those docket entries reflect all the times that Judge Boyer and Judge Keller presided together during the Daney trial as reflected by this?

BY JUDGE MURPHY: As we understand it, the witness said the very entries in question were not made by her but by another person in the room.

Elizabeth M. Degan—Direct

BY MR. MARGIOTTI: But it was her duty to put them in the record.

BY JUDGE MURPHY: She put something in the record. Of course, you can ask a question whether or not there is concurrence and agreement between one thing and another.

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: But she was apparently not in the room when the Judges were on the bench, if they were.

BY MR. MARGIOTTI: I am not saying they are. I am only saying—I only want to know—she had transcribed from the notes, what appears on the notes, about his appearance into the record; that's all. Whether or not she was there, I don't care.

BY THE WITNESS: (341) Yes sir.

BY MR. MARGIOTTI:

Q. You did?

A. Yes sir.

Q. Let's take, for instance—we have come to the conclusion there was some discrepancy, but we may be wrong. Let's take the date of June 11, 1948. Does that show who was presiding that date; does the docket entry show who was presiding that date?

A. June 11—

Q. Yes.

A. Honorable Hiram H. Keller.

Q. All right. Now then, you say you took these notes and it was your duty to properly reflect in the docket entry what was on these notes. Will you look at the notes as to who was

Elizabeth M. Deyan—Direct

presiding on 6/11/48 and tell me whether the record, the docket entry, correctly reflects what was on the note?

A. No, it does not —

BY MR. VAN ARTSDALEN: I object. I think he is cross-examining his own witness.

BY JUDGE MURPHY: If that is your only objection, your objection is overruled.

BY MR. MARGIOTTI:

Q. If it does not reflect the correct note, do you know why it doesn't? I think we would all be interested in knowing that.

BY JUDGE MURPHY: Young lady, we may get a little light if I tell you this: We have here several docket entries and we have the transcript of testimony at the trial and the transcript of testimony shows that throughout the whole trial Judge Boyer (342) appeared once on the bench; the docket entries themselves as to this trial show a certain situation. Now apparently there were some memoranda sheets taken in the courtroom. And what we want to know is did Judge Keller preside at this trial and conduct it or did he and Judge Boyer do it, or was Judge Keller on the bench alone throughout the trial, or did Judge Boyer at times sit with him at times, and if so, when? That is the question.

BY MR. MARGIOTTI:

Q. Will you answer the Judge's question, and I will ask you some other questions?

BY JUDGE MURPHY: I didn't ask a question. I was informing her.

Elizabeth M. Degan—Direct

BY MR. MARGIOTTE:

Q. That is not the question. That is not the information I was seeking. I am seeking to ascertain why the discrepancy between these docket entries and these notes.

A. I probably made the mistake and failed to put Judge Boyer's name if it is on the sheets there.

Q. I see. Would you make the same answer—I call your attention now to June 12, 1948. What does the docket entry show about who was presiding at the Darcy trial?

A. Judge Keller.

Q. Now I call your attention to the yellow sheets, which are a part of "Relator's Exhibit No. 116," and who do they show was presiding?

A. Judge Keller and Judge Boyer.

Q. Now what is your explanation for that entry not appearing in that manner in the docket?

A. I probably failed to put it in.

(343) Q. I see. All right. Now then, as to 44-6/14; what does the docket entry show about who was presiding?

A. Judge Keller.

Q. Now I call your attention to the yellow sheets, as part of "Relator's Exhibit No. 116," and who do they show was presiding?

A. Judge Keller and Judge Boyer.

Q. And if you failed—did you fail then to properly report that in your docket entry?

A. Yes, I would say so—

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTE:

Elizabeth M. Degan—Direct

Q. Did you report it as indicated in the yellow sheets, whether properly or otherwise?

A. I tried the best of my ability to report it as on the sheets.

Q. Did you?

A. No, I didn't there.

Q. Why not?

A. Because I knew Judge Keller was trying the case. I can't remember why I didn't put Judge Boyer's name in there.

BY JUDGE WATSON: As I heard the statement by the witness "I knew that Judge Keller was trying the case." Did I hear that correctly?

BY THE WITNESS: That is right.

BY JUDGE WATSON: Well, was Judge Boyer trying the case?

BY THE WITNESS: No sir.

(344) BY JUDGE WATSON: He was not.

BY MR. MARGIOTTI:

Q. Do you know how long Judge Boyer stayed on the bench on these occasions when he presided?

A. No —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTI: The only reason I am asking that question is in view of the Court's question.

Elizabeth M. Degan—Direct

BY JUDGE MURPHY: You have used the words "Judge Boyer presided."

Young lady, to your knowledge, did Judge Boyer preside at all in the Darcy case?

BY THE WITNESS: No sir.

BY MR. MARGIOTTI:

Q. Mrs. Degan, do you know what part, if any, he took in the Boyer trial?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained.
Read the question, Mr. Reporter.

(Question read by the Reporter.)

BY MR. MARGIOTTI: (345) Pardon me!

Q. Mrs. Degan, do you know what part, if any, he took in the Darcy trial?

A. Will you repeat the question?

BY THE COURT: Read the question, Mr. Reporter.

(Question read by the Reporter.)

BY THE WITNESS:

A. No, I do not.

BY MR. MARGIOTTI:

Elizabeth M. Degan—Direct

Q. I don't remember—neither does Mr. Pannell, whether I asked concerning June 9, but I will ask it again anyway. On June 9 whom does the docket entry show as presiding in the Darcy trial—1948?

A. Honorable Hiram H. Keller.

Q. Now I am going to show you the notes, which are part of "Exhibit No. 116," and who do they show?

A. Judge Boyer and Judge Keller.

Q. Who was the Chief Clerk at that time, Mrs. Degan?

A. Of Quarter Sessions —

Q. Yes.

A. Matthew L. Godshall.

Q. The reason—is your reason any different for the difference between the notes and the docket entries—the reasons you gave for the other occasions is the same reason—I withdraw the question. Will you tell me why in the last reason—in the last reason—the one I asked you about June 9, the notes show that Judge Keller and Judge Boyer presided while the docket entries show Judge Keller?

A. We also have a minute book where those minutes get put in.

(346) Q. Yes —

A. At the beginning of the trial as I wrote it up the said case being heard before Honorable Hiram H. Keller. Therefore, I did not put Judge Boyer's name in the trial because it was heard before Judge Keller, and in the minute book probably both Judges are named.

Q. Well, do you know what the minute book shows?

A. I haven't looked at it since I wrote it up.

Q. Who kept the minute book?

A. Who docketed the minute book —

Q. Yes.

A. I did.

Q. I show you Criminal Docket Book "Relator's Exhibit

No. 115," and I ask you now to look at the entries in the minute book under the date of June 9, which is the last date I asked you, and what does that show with reference as to who presided?

A. Judge Keller and Judge Boyer.

Q. That would be the same as the notes?

A. Right.

Q. But so far as the docket entries are concerned, do you know what they show as to who presided that day?

A. On June 9 —

Q. Yes:

A. Probably just Judge Keller.

Q. I don't like to have you say "probably." I would like to have you definite.

A. I just looked at it and I can't recall.

Q. We will let you look at it.

A. Judge Keller.

Q. "Relator's Exhibit No. 4," who does that show?

A. Judge Keller.

(347) Q. How come that the notes show Judge Keller and Judge Boyer; the minute book shows Judge Keller and Judge Boyer; and the docket entries show only Judge Keller?

A. That is the way we do it. That is the way we write it up. The minute would be—I would have to put on the minutes who came in in the morning and presided there, but they don't say they had it complete, so in that particular case Judge Keller had it, and that is the Judge that is mentioned here.

Q. That is the reason?

A. That is the reason here.

Q. Do you know how long in each instance Judge Boyer would remain on the bench?

A. No, I couldn't tell you exactly.

Q. All right; that answers the question.

Elizabeth M. Degan—Direct

BY JUDGE MURPHY: Did they have regular motion days in Quarter Sessions; did they have a certain day in the week when there were motions heard by the Court?

BY THE WITNESS: Before Court began—before the trial began—

BY JUDGE MURPHY: In some courts they have Mondays, Wednesdays and Fridays, or a certain day in the week, which is motion day when lawyers who have anything to do with cases that are going on come before the court in the morning before they get on with the trial. Do they have any such thing down in Bucks County?

BY THE WITNESS: Yes, we do.

BY JUDGE MURPHY: Now how many different days in the week was that business, or was it each day?

(348) BY THE WITNESS: I think each day the Court was opened they could do that.

BY JUDGE MURPHY: Well, each morning in Bucks County while you were there in 1948 did the two Judges come on the bench to dispose of business in the way of motions and so like, or do you know?

BY THE WITNESS: I don't know if they come everyday.

BY MR. MARGIOTTI: That is all.

CROSS-EXAMINATION.**BY MR. VAN ARTSDALEN:**

Q. It was the practice, however, was it not, at the beginning of each session both in the morning and in the afternoon for both Judges to come on the bench to hear any miscellaneous motions that may be presented to them?

A. Yes sir.

Q. And your minute book where it indicates that Judge Keller and Judge Boyer were both presiding, that indicates that both of them came up on the bench at that time, is that correct?

A. That is right.

Q. Now then, if one of them should leave the bench, would that be recorded on your minute book?

A. No sir.

Q. It would not be. And, Mrs. Degan, the pencil notations that are in your handwriting you were present in Court during those periods of time—correct?

A. Yes sir.

BY MR. VAN ARTSDALEN: That is all.

(349) BY MR. MARGIOTTI: All right, Mrs. Degan. Thank you very much.

(Witness excused.)

Matthew L. Godshall—Direct

MR. MATTHEW L. GODSHALL, called and sworn on behalf of the Relator, on direct- and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Godshall, where do you live?

A. Doylestown, Bucks County.

Q. Will you state whether or not you held some office in that County?

A. I did; Clerk of the Court, Quarter Sessions, Oyer and Terminer, 1948 to 1951 inclusive.

Q. What part of 1948 did you start?

A. I started January 1, the first Monday in January.

Q. And you continued in that job until when?

A. The first Monday in January 1951.

Q. And during the time that the Foster-Zietz trial was on and the Darey trial was on were you the Clerk of the Court?

A. I was.

Q. In other words, you had supervision over all the other clerks who were in your office?

A. That is right, sir.

Q. And you were Mrs. Degan's boss?

A. That is right.

Q. And what are you doing now?

A. I have a store.

Q. I see. Now I would like to ask you a few questions about the selection of the jury in this case. Do you remember how the jury was selected?

A. I do, sir.

(356) Q. How was it selected? Let's take first the—let's take the Foster-Zietz trial first.

A. Well, as a rule of the County the panel would be brought in on a certain day and from that panel we selected jurors.

Q. And when the panel reports, what part of the courtroom do they report to?

A. They come in the main courtroom.

Q. The main courtroom?

A. That is what we call the main courtroom; yes sir.

Q. Is that the courtroom in which the defendants were tried?

A. For some trials. It has also other courtrooms.

Q. Well, in this particular case will you tell me which room they reported?

A. The main courtroom.

Q. Is that the room in which the defendants were tried?

A. That is right.

BY JUDGE MURPHY: You are talking about "in this particular case." I assume that is Darcy. The next question: Is that where the defendants were tried?

BY THE WITNESS: That is right; after the jury was completely —

BY JUDGE MURPHY: I am talking to counsel. I don't know what we are talking about. It appears in one sentence one thing and in the other another.

BY MR. MARGIOTTI:

Q. The Foster-Zietz trial was that conducted in the main courtroom?

A. It was, sir.

Q. And was the Darcy trial conducted in the same room?

(351) A. It was, at a different time; yes sir.

Matthew L. Godshall—Direct

Q. At a different time but in the same room?

A. Same courtroom, yes sir.

Q. You say that the jurors report in that particular room?

A. They do.

Q. So that when the jurors in the Foster-Zietz case reported they reported in that room?

A. Yes sir.

Q. And when the jurors in the Darcy case reported they reported in the same room?

A. They did, sir; yes sir.

Q. Do you know what day the jurors reported in the Darcy case?

A. Well, you have got me—I couldn't just—that has been quite sometime; I have been out. I think it was June —

Q. Don't guess. If you don't know, don't guess—if you know; otherwise, the record is the best evidence.

A. I couldn't swear to that.

Q. On June 1 the Foster-Zietz trial was going on, wasn't it—it was in progress?

A. It could have been, yes sir. If it was on the record, it could—but I have been out of there sometime.

Q. Only for the purposes of refreshing your mind as to June 1 —

A. June 1 —

Q. Yes. I will have you look at the docket entries marked "Relator's Exhibit No. 1" under June 1. That will probably refresh your memory as to whether or not the Foster-Zietz trials were going on on that day. Just look under the date of June 1.

A. Yes sir.

Q. Now then, do you know when the jurors for the Darcy case (352) appeared or returned in connection with their duties, when they first appeared, when they reported?

A. Yes sir, when they appeared —

Matthew L. Godshall—Direct

Q. The Darcy case.

A. The Darcy case, I would say the following week.

Q. Do you know?

A. I can't swear to it, no sir, because it has been sometime.

Q. I don't want you to guess.

A. I can't swear to that, sir.

Q. Let me show you a record. Look at "Relator's Exhibit No. 10" on Page 331, and see whether or not the jurors didn't report on June 1, 1948.

BY MR. VAN ARTSDALEN: I object. The record will speak for itself in that respect.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTI:

Q. Will you look at that record and see whether or not it refreshes your memory as to when they returned?

BY JUDGE MURPHY: "Returned"

BY MR. MARGIOTTI: When they came in; when they appeared.

BY JUDGE MURPHY: Which?

BY THE WITNESS:

A. For the second week you mean, sir.

BY MR. MARGIOTTI:

Q. Look at the record and see what it says; then I will ask

Matthew L. Godshall—Direct

you soine questions. See whether or not it refreshes your memory as (353) to when the jurors answered their summons.

A. The second week it says here which must be correct. You see, I can't swear to it unless I read it here in refreshing my mémory. It is over six years ago. I have been out of Court two, and I can't swear definitely to some of these things.

Q. Will you look at the second page too to ascertain whether or not there is anything on that second page that refreshes your memory? Don't answer the question until I ask you one.

BY JUDGE MURPHY: For the record, what is the second page?

BY MR. MARGIOTTI: I think that is a good question. The second page is Page 332.

BY THE WITNESS:

A. The second week, that would be what date, sir?

BY MR. MARGIOTTI:

Q. Now you have looked at that. I am going to ask you a question.

BY MR. VAN ARTSDALEN: The question was whether that refreshed his recollection.

BY MR. MARGIOTTI: I didn't ask him that. I didn't ask him anything yet.

Q. I wanted you to look at that in order to determine whether or not your memory has been refreshed. If it has, I am going to ask you soine further questions. If it hasn't, I am

Matthew L. Godshall.—Direct

going to stop. Has your memory been refreshed by that record —yes or no? Otherwise, the record speaks for itself.

BY JUDGE MURPHY: Sir, what you are being asked is if by looking at that page something occurs to your mental processes where you now remember that that occurred on that day; do you?

BY THE WITNESS: (354) No sir, I do not.

BY JUDGE MURPHY: Next question.

BY MR. MARGIOTTI:

Q. When the jurors appeared in the large courtroom the first day that they showed up in obedience to a summons, will you state whether on that day as a general practice there would be a number of jurors excused who had proper excuses?

A. Yes sir.

Q. Now, Mr. Godshall, I want you to look at "Relator's Exhibit No. 116" and selected therefrom, take the papers out and if there are any papers in your handwriting, will you tell me which ones are in your handwriting?

A. That is in my handwriting, sir.

Q. If that is in your handwriting, so that we have this clear for the record, that is a white paper having attached thereto a yellow sheet; is that right?

A. Yes sir.

Q. All right.

A. The third sheet of this here is in my handwriting, the third sheet, #1 it has marked.

BY MR. MARGIOTTI: May I have him put an "x" on any that is in his handwriting? I will tell you what we will do.

Matthew L. Godshall—Direct

Put a "G" on anything in your handwriting. Start with these sheets and then we won't have any mistake.

BY JUDGE MURPHY: We are now in Federal Court and obliterating to that extent to a State record, but I don't think much harm is done so far by marking "G"; ordinarily it is not done.

(355) BY THE WITNESS: Now there is two different writings on this sheet here; Mrs. Degan's and my own is on the same sheet here. Is that the answer?

BY MR. MARGIOTTI:

Q. That is O.K. Will you tell the Court, please, your purpose in keeping these papers, these papers here?

A. For the record of Quarter Sessions Court.

Q. And what would you do with them?

A. They would be entered in the docket in the Quarter Sessions room.

Q. In other words, these are the original notes?

A. They are notes to a certain extent, minute notes. Notes in court were taken by the stenographer. Those are notes taken by myself.

Q. Those are the first notes taken by you or by your clerk?

A. That is right. There is more. May I go on?

Q. If there is more, go on and mark them all.

A. I think I have them all, sir.

Q. When were those notes made with reference to the occurrence of the events thereon noted?

A. They start with the opening of the court on the date of the trial.

Q. What I would like to know, to make it short, is whether or not you made those notes as the events occurred as shown on the notes?

A. That is right. They are the minutes of the court.

Q. I note there a number of instances—if the Court will permit me to ask one general question—a number of instances that show that Judge Keller and Judge Boyer presided at the Darcy trial; did you notice that?

(356) A. Not at that Darcy trial.

Q. Did you notice that in your notes?

A. Can I explain that?

BY JUDGE MURPHY: Yes.

BY THE WITNESS: The rules of the court—all the judges came into the courtroom —

BY MR. MARGIOTTI: I object.

BY JUDGE MURPHY: The objection is overruled.

BY THE WITNESS: Our court the judges came on the bench the same as two here; then there would be legal matters come before the court, lawyers on motions, and at the time of the trial, what time the legal matters stop, the judge of that court would take his case and the other judge would go to the other courtroom, he would leave the court. The judge at that time didn't happen to go into the matters, the trial he was attending or taking care of.

BY MR. MARGIOTTI:

Q. Are there any minutes showing what time—strike that. The minutes do show that Judge Boyer and Judge Keller presided at certain times as outlined in those notes?

A. At the opening of the court in the morning.

Q. That is right. Do the minutes show when Judge Boyer left the bench?

Matthew L. Godshall—Direct

A. No sir.

Q. Do your minutes show whether or not he returned to the bench thereafter?

(357) A. Judge Boyer —

Q. Yes.

A. Judge Boyer did not return to the bench.

Q. If he did return, would your minutes show it?

A. You mean if he returned to the bench in what capacity —

Q. Let's assume he sat on the bench in any capacity during the Dacey trial, would your minutes show that?

A. I would have put it back on if he came into the trial, but I don't remember Judge Boyer ever coming back into the trial. He had other cases in the other courtroom, sir.

Q. Well, do you know that there was an incident reported in the transcript of testimony when there was an objection to his sitting on the bench in the Dacey trial?

A. No sir, I do not remember him coming back, sir.

Q. Did you make a notation of when Judge Boyer came back on that occasion?

A. I don't know what you are talking about. I don't remember Judge Boyer coming back.

Q. Coming back where?

A. Onto the bench as you are referring to.

Q. Did you see him coming on the bench?

A. No sir; only at the time we opened court in the morning.

Q. If he came back on the bench and you know he came back on the bench, why didn't you note that he came back on the bench?

A. I didn't know that he came back on the bench —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTI:

(358) Q. What was that?

A. I did not see him come back to the bench.

Q. Will you look at your notes for June 12, 1948 at 10:00 o'clock in the morning?

A. June 12—yes sir.

Q. Who were the judges presided in the morning?

A. Every other morning both judges come —

Q. I am asking you who presided that morning, June 12?

A. Judge Keller presided.

Q. Who else? —

A. Calvin S. Boyer.

Q. Why didn't you mention Boyer

BY JUDGE MURPHY: I might say there is no jury here and "presided" has two meanings.

BY MR. MARGIOTTI: Who presided on the bench—whether he presided or sat there?

BY JUDGE MURPHY: The question is who presided at the opening of court in the morning? and the other question is who presided at the trial?

BY MR. MARGIOTTI:

Q. I will withdraw the trial. I want to know who sat on the bench.

A. Honorable Judge Keller.

Q. Who else?

A. In the morning Judge Boyer. They had some other legal matters which they would take up in the morning.

Q. Do you know whether or not on that morning Judge Boyer left the bench?

Matthew L. Godshall—Direct

A. Judge Boyer left the bench every morning, sir.

BY MR. MARGIOTTI: We ask that the answer be stricken out, not responsive.

BY JUDGE MURPHY: (359) Read the question and answer, Mr. Reporter.

(Question and answer read by the Reporter.)

BY JUDGE MURPHY: The motion is denied; the whole includes its parts.

BY MR. MARGIOTTI:

Q. Will you tell me whether or not he left the bench at any particular time that morning?

A. I couldn't specify the time. That would be in the Stenographer's record, I should think. When the trial started then Judge Boyer would go to his courtroom with other cases, as I said before.

Q. You said that was in the record of the Stenographer?

A. I don't have anything to do with that.

Q. Didn't you say that? I thought you said that. All right, then you didn't see him leave the bench at all—you recall?

A. Yes sir, every morning he would leave the bench.

Q. Did you see him return?

A. No sir.

Q. Did you see him participate in the Darcy trial?

A. No sir.

Q. Can you tell me at what portion of the trial it occurred on that day Mr. Achey said to Judge Boyer:

"I object to Judge Boyer sitting in on this case. I don't mind trying against one Judge," and Judge Boyer said:

"The Judges reserve the right to confer without being obliged to get the consent of defense counsel," and Mr. Achey said:

"In view of the statement which Judge Boyer made to the jury in the trial of Foster and Zietz, which was tried last week, I submit that he has disqualified himself from sitting in on this case, and it is prejudicial to this defendant."

(360) Do you know when that happened?

BY JUDGE MURPHY: As we understand, the record of the trial shows that occurred at sidebar. I think in fairness to the witness he ought to be asked if he was in position to hear what occurred at sidebar.

BY MR. MARGIOTTI:

Q. Did you observe a sidebar conference between Judge Boyer and Mr. Achey and possibly engaged in by Judge Keller?

A. No sir; I could—it could have been that I was out for a few personal reasons during a few minutes.

Q. You didn't know there was any sidebar conference at any time during the trial?

A. No sir.

Q. You didn't know there was any conversation such as I read to you; you weren't within hearing distance of it even though it was quiet conversation at sidebar?

A. I couldn't hear any conversation at sidebar.

BY JUDGE MURPHY: Are you hard of hearing?

BY THE WITNESS: Slightly, yes sir. It is just getting worse in the last years.

BY MR. MARGIOTTI:

Matthew L. Godshall—Direct

Q. Was it the duty of anyone to record it anywhere the return of Judge Boyer to that courtroom once he left it?

A. I don't think—that I don't think is in my ability to answer. I don't have anything to do with that part of court; Judge Boyer and Judge Keller.

Q. I am asking you if you know it was the duty of anyone to report (361) his return to the courtroom once he left it?

A. In what way? Just the courtroom or into the trial, sir —

Q. Let's say sat on the bench.

A. I think if he sat on the bench I would note that.

Q. You would note that?

A. Yes sir.

Q. Was it your duty to note it?

A. I would put it in my minutes.

Q. You would put it in your minutes?

A. If he sat on the bench.

Q. If he sat where lawyers sat or newspapermen sat, would you report it?

A. Well, I never saw Judge Boyer or Judge Keller sit in the newspaper reporters stand —

BY MR. MARGIOTTI: I move to strike that.

BY JUDGE MURPHY: The motion is denied. We think it is partially responsive. The question is would he report it? We think it is partially responsive.

BY MR. MARGIOTTI:

Q. If he sat anywhere in the body of the courtroom except on the bench, would you report it?

A. No sir, I wouldn't report it if he walked into the courtroom, into the judges' chambers or things like that; no sir.

Q. Would you report when he left the bench each morning?

A. No sir. I just—as I said before, if that came along then the (362) Court Stenographer would take over. That was his duty. I am no stenographer. I was just Clerk of Courts. I never trained for stenographer, sir.

Q. You relied on the Stenographer reporting when he left the bench?

A. I think he would take care of that; that is his duty.

BY MR. MARGIOTTI: You may cross-examine.

CROSS-EXAMINATION:

BY MR. VAN ARTSDALEN:

Q. Mr. Godshall, I think you inadvertently said you served from 1948 to the first Monday in January 1951. It should be 1952?

A. 1952 it should be; four years inclusive.

Q. Now these pencil notes you have, they are the minutes which you as Clerk of Quarter Sessions take; they were your Quarter Sessions work only; is that correct?

A. That is right.

Q. Isn't it also correct in the morning and at noon there are other matters taken up before the bar of the Court both as Common Pleas and Orphans Court?

A. Yes sir.

Q. And is it not also correct that those pencil notes are merely for your own records in the minute book?

A. That is right.

Q. And the minute book is subsequently made up?

A. That is right.

Q. Now then, the docket of criminal cases themselves, either Oyer and Terminer or Criminal Sessions, were also made up

Matthew L. Godshall—Re-direct

partly from the notes of the Court Stenographer and partly from your pencil notes; is that correct?

A. Yes sir.

(363) Q. And in the docket of the Court of Oyer and Terminer where a case indicates that Judge Keller is presiding at that case, would that not indicate that he is the judge that is trying the case?

A. He is trying the case, yes sir.

Q. If both judges were sitting jointly trying a case, would it appear in the docket as to that criminal case as both judges sitting jointly trying a case?

A. Just as it occurs if they had both laywers, we put both down.

Q. As a matter of fact, when one of the judges would leave the bench in the morning your minutes would not note they leave; is that correct?

A. They wouldn't, no.

Q. As a matter of fact, if Judge Boyer and Judge Keller after leaving should come back in, would or would not your notes indicate their return?

A. Not just coming into court unless they were sitting in on the trial.

Q. When you say "they were sitting in on the trial," you are referring to a situation where if they came in and jointly sat as a trial judge in that case; is that correct?

A. That is right.

BY MR. VAN ARTSDALEN: That is all.

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Godshall, were there any motions presented during the Darcy trial by any of the lawyers at all?

A. Any motions for—

(363a) A. Motion or exceptions, sir—

A. Motion or exceptions, sir—

Q. No, no. I mean just motions such as the Court asked you about, and the District Attorney, where lawyers come in and make motions concerning pending cases.

A. Nosir. That was taken up before the trial.

Q. That was taken up before the trial. Now do you know of any motion being taken up before the trial?

A. That is the rule of the court every morning.

Q. I mean in the Darcy trial.

A. Well, there could have been before the court before they tried the cases.

Q. I want to know if you know of any.

A. I couldn't honestly say there were, but they must have been.

Q. Do you know of any? Particularly do you know of any?

A. No sir, I couldn't answer that question.

Q. And if there had been some presented, would there not be a record of them in the Clerk's office?

A. There could have been in Civil Court or in Quarter Sessions Court, yes sir. If that is what it happened to be, that would be dated that day. There would be dates on the day they were presented, the motions.

Q. In other words, you would make an entry if a motion was presented and the date that the court acted on the motion?

A. If he acted that morning I wouldn't put it that way, case called up.

Q. You would certainly make an entry a motion was presented on a certain date?

A. Not unless in our court, Quarter Sessions Court.

Q. In your Criminal Court you would?

A. That is right.

(364) Q. Do you have a Prothonotary in your County?

Matthew L. Godshall—Re-cross.

A. Yes sir.

Q. So you have no personal knowledge of any civil or criminal cases be presented any particular morning before court convened, as you have said yourself, during the Darcy trial?

BY MR. VAN ARTSDALEN: I object to the word "convened."

BY JUDGE MURPHY: You object to the question?

BY MR. VAN ARTSDALEN: Yes sir.

BY JUDGE MURPHY: It is sustained as repetition. He said he didn't. We will permit it once more.

BY MR. MARGIOTTI: I am satisfied.

BY JUDGE MURPHY: The witness said the motions no, he couldn't recall whether there were any motions made. If there were, they might be Common Pleas—civil or criminal. If they were civil, the Common Pleas clerk would make the record. If they were criminal, there would be a record. He has no recollection as of now whether there were any or not.

BY MR. MARGIOTTI: That is all.

RE-CROSS EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Isn't it also true both judges would come in in the morning and at noon whether or not they knew in advance there was going (365) to be any motions?

A. That is right.

Q. And lawyers were afforded opportunity to present their motions?

A. At that time.

BY MR. MARGIOTTI: We object; it has been gone over.

BY JUDGE MURPHY: That part wasn't what he brought on, the court by going on the bench would not indicate there necessarily was but they went on anyhow to afford the opportunity. That wasn't here before.

BY JUDGE WATSON: It was a practice obviously that would avoid the necessity of judges being disturbed in chambers. They may have and said "Here we are; present your motion." Was that it?

BY MR. VAN ARTSDALEN: That is right.

BY JUDGE WATSON: I can understand it. It is very common practice in many districts in State courts.

BY MR. MARGIOTTI: If that was the only practice, I would have no complaint.

BY JUDGE MURPHY: That is where we are so far. Let's go on.

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. And these motions were all presented before the court would convene.

Matthew L. Godshall—Re-direct

BY JUDGE MURPHY: (366) That is a technical word—"convene?"

BY THE WITNESS: I said before that the court—they present in the morning.—

BY JUDGE MURPHY: You are now asked a question: whether the court would convene. If the court is on for motions, it has convened. If the court is on for trial, it is another matter.

BY MR. MARGIOTTI: He said—I understood him to mean that before convening of the court that the judges would be on the motions.

BY JUDGE MURPHY: This Court is not confused. Let me put it that way. We will take a ten-minute recess.

(Recess.)

(Court resumes after the recess with all parties, including the Relator, David Darcy, present in Court.)

BY JUDGE MURPHY: Gentlemen, in order that the Court may arrange its calendar, we had some eight or nine pre-trials today; they are continued until a week today, and we have others scheduled throughout the week; and certainly we don't wait to in any way to impede the progress of this particular hearing. But so we can make some at least tentative arrangements, will counsel for the Relator give the Court an idea of how much longer he thinks his side of the case will take?

BY MR. MARGIOTTI: If the Court please, it is my esti-

mation we will conclude our testimony by—certainly by to-morrow evening and apparently long before that, maybe by noon tomorrow. We will try to finish (367) today if we can.

BY MR. VAN ARTSDALEN: We anticipate calling probably about ten witnesses. On direct-examination I don't think any of them will take more than one-half hour at the very most.

MR. A. RUSSELL THOMAS, recalled.

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. I want to ask you about an editorial appearing in your paper called "Raus Mit 'Em." What is the English of that?

A. I haven't the slightest idea.

BY JUDGE MURPHY: It means "Throw them out."

BY MR. MARGIOTTI: Court will take judicial notice of that, I assume.

Q. Mr. Thomas, you testified about the paper being sold at some inn; your paper being sold at some inn; do you remember—some agency?

A. Agency, yes.

Q. What was that—what agency?

A. Kenny's News Agency.

Q. All right. And where was your paper published?

A. Where was the paper published? In the Intelligence Building, Monumental Square.

A. Russell Thomas—Re-direct

Q. How far from the courthouse?

A. One-half block.

Q. Will you state whether or not people came to your publishing room for papers?

A. They have customers come in to buy papers, and visitors.

Q. How soon after the publication of your paper would you say that (368) it would be in the hands of all your subscribers—did you provide it to all your subscribers?

A. If everything goes right, by the next morning the out-of-town subscribers, and people living in the community probably the same afternoon.

Q. You stated while you were on the stand that you were the correspondent for the Bristol paper?

A. That is right.

Q. Will you state whether or not you gave the Bristol paper the same stories that appeared in your paper?

A. Substantially so. I made copies of most of the stories.

Q. I see. Will you state—we are offering this as secondary evidence on account of not being able to get the original papers—whether or not you had called to your attention for checking purposes or called to your attention the Bristol papers as they were published?

A. I didn't get it —

Q. Were the Bristol papers called to your attention?

A. Yes.

Q. And will you state whether you observed whether their stories were substantially the same as those appearing in the Intelligencer?

A. I am quite positive, yes.

Q. Owned by the same people?

A. That is right.

Q. Who was the editor at that time of the Bristol Daily Courier?

A. Mr. Serrell Detlefson.

BY MR. MARGIOTTI: That is all.

RE-CROSS EXAMINATION.

BY MR. VAN ARTSDALEN:

(369) Q. Kenny's News Agency is not an inn?

A. No sir.

Q. It isn't located in an inn?

A. No sir.

Q. It is in a separate building, is that correct?

A. Yes sir.

Q. Of all the articles that appeared in the Bristol paper, did you read them?

A. I did not read all of them. I just glanced over some articles at night.

Q. The headlines were different, were they not?

A. Naturally.

Q. Isn't it correct the headlines in the Bristol paper were much smaller and gave much less prominence than appeared in the Doylestown paper?

A. I think the makeup at that time was more conservative.

Q. And was a conservative paper, isn't that correct?

A. That is correct.

BY MR. VAN ARTSDALEN: That is all.

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. But the stories were the same?

A. That is right.

BY MR. MARGIOTTI: That is all.

(Witness excused.)

Matthew L. Godshall—Re-direct—Re-cross

Serrell Detlefsen—Direct

MR. MATTHEW L. GODSHALL, recalled

RE-DIRECT EXAMINATION (Continued)

BY MR. MARGIOTTI:

(370) Q. Mr. Godshall, do you remember where the jury stayed during the Darcy trial?

A. I can't honestly say whether it was the Doylestown Inn or the Bucks County Inn. It was one or the other. I can't say which it was. It runs in my mind it was the Bucks County Inn but I couldn't say for sure.

BY MR. MARGIOTTI: All right; that is all.

RE-CROSS EXAMINATION

BY MR. VAN ARTSDALEN: No questions.

(Witness excused.)

MR. SERRELL DETLEFSON, called and sworn on behalf of the Relator, on direct- and cross-examination, testified as follows:

DIRECT EXAMINATION

BY MR. MARGIOTTI:

(Q. Mr. Detlefsen, where do you reside?)

A. Bristol, Pennsylvania.

Q. Where were you living in 1948?

A. The same place.

Q. And what were you doing at that time?

A. I was editing the Bristol Courier.

Q. What was the circulation of your paper in 1948?

A. 1948—approximately 7,000, sir.

Q. And will you state whether that circulation was in Bucks County?

A. Very much so; not completely but —

Q. Practically all of it?

A. That is right.

Q. What section of Bucks County did you cover?

A. Lower Bucks County.

(371) Q. Where did you get—did you carry stories on the Easterville robbery and killing?

A. Yes, we did.

Q. And did you carry stories on the—between the act and the trials of Foster and Zietz?

A. Well, I presume we did. The story was very current then.

Q. Did you carry stories on the Foster-Zietz trial?

A. Yes sir.

Q. And also on the Darey trial?

A. That is right.

Q. Where did you get most of your stories?

A. From A. Russell Thomas.

Q. The gentleman who just appeared on the stand?

A. Yes sir.

Q. And did your stories run about the same as he turned over to you?

A. Yes.

Q. I believe someone said your headlines were a little more conservative?

A. Our makeup was more conservative.

Serrell Detlefson—Cross

Q. Now when you said the southern part of the county would you mind for the record telling us what sections of Bucks County that would include?

BY JUDGE MURPHY: We have a map. All the Court has to do is look at it. We have north, east, south and west.

BY MR. MARGIOTTI: I am not too sure the map will tell you particular sections.

BY JUDGE MURPHY: (372) Go ahead.

BY MR. MARGIOTTI:

Q. What do you mean by the southern part of the county?

A. I mean Morrisville, Langhorne, Pennel, the townships of Bristol, Bensalem.

BY MR. MARGIOTTI: That is all.

CROSS-EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Most of the circulation, however, was in the Borough of Bristol; is that correct?

A. In the Borough and the immediate surroundings.

Q. And that was a daily paper, was it not?

A. It was.

BY MR. VAN ARTSDALEN: That is all.

BY MR. MARGIOTTI: That is all.

Serrell Detlesson—Re-direct

BY THE COURT: Mr. Kerrigan said reading from the record that your circulation in 1948 was 5,397; you say it was 7,000; which is right?

BY THE WITNESS: I said approximately. I am not just too positive about that.

BY JUDGE MURPHY: You are about 1,700 off between you.

We understood you had stipulated before that 5,397 was the circulation. Now which is which?

RE-DIRECT EXAMINATION.

(373) BY MR. MARGIOTTI:

Q. Which is correct?

A. Well I honestly don't know. I haven't the figures. I can't tell you. Probably Mr. Kerrigan had checked the figures before he left.

BY JUDGE MURPHY: I already understand you stipulate 5,397, and there was a paper on that table—it was read from at the time—on the Commonwealth's table.

BY MR. MARGIOTTI: I think we will stick to the stipulation.

BY JUDGE MURPHY: Go ahead.

BY MR. MARGIOTTI: That is all.

BY MR. VAN ARTSDALEN: That is all.

(Witness excused.)

George Fox—Direct

MR. GEORGE FOX, called and sworn on behalf of the Relator, on direct- and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Fox, where do you live?

A. Quakertown.

Q. How long have you lived there?

A. About twenty-five years.

Q. That is in Bucks County?

A. Yes.

Q. What section of Bucks County?

A. The northern part.

Q. The northern part. Will you state what is your business?

(374) A. Reporter.

Q. For what paper?

A. Quakertown Free Press.

Q. Is that a weekly or daily paper?

A. Weekly.

Q. What day of the week is it published?

A. Thursdays.

Q. Did you publish stories concerning the Feasterville killing and robbery as well as the trials of Foster-Zietz and Darcy?

A. Yes, it did.

Q. And you have your papers with you?

A. Yes.

Q. Will you produce them, please?

A. Yes.

Q. Will you state whether or not you know what the circulation of your paper was in 1948?

A. Not quite 5,000.

George Fox—Direct

Q. And will you state where was the principal part of your circulation?

A. Quakertown and mostly R.D.'s around there.

Q. Within a radius of how many miles of Quakertown?

A. Oh, I would say twenty-five.

Q. I want you to turn—strike that. I want you to look at a record that is before you and tell me whether that is a record of the publications of your papers.

A. You mean circulation—

Q. Whether or not that is a record showing the copies of all your publications?

A. Yes sir.

BY MR. MARGIOTTI: If the Court please, we offer in evidence as of May 20, (375) Pages 1 and 8; May 27, 1948, Pages 1 and 4; May 27, Page 1, June 10, 1948, Pages 1 and 2; June 17, 1948, Pages 1 and 7. But since this is an original bound volume of the original publications, we ask leave to have them photostated for convenience and to furnish the Court and the District Attorney or the Attorney General's office with copies.

BY MR. VAN ARTSDALEN: We object to the offer on the basis of the objection made to prior publications.

BY MR. MARGIOTTI: For the sake of convenience we will mark it just "Relator's Exhibit No. 123."

BY JUDGE MURPHY: The issue of May 20 will be "123(A)"; the issue of May 27 will be "123(B)"; the issue of May 27 will be "123(C)"; the issue of June 10 will be "123(D) and (E)"; and the issue of June 17 will be "123(F) and (G)."

BY MR. MARGIOTTI: What about the 27th? You see you have two pages.

George Fox—Cross

BY JUDGE MURPHY: Give them all a number.

(Exhibit marked "Relator's Exhibit No. 123 and 123(A) to 123(G), inclusive.)

BY MR. MARGIOTTE: That is all.

CROSS-EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Fox, those particular dates that you have referred to, are they the only times in which your paper carried any stories with reference to Zietz, Foster or Darcy?

A. So far as my knowledge, I was not even working with the paper at that time.

(376) Q. You have examined them to see if there were any other articles on Foster, Zietz or Darcy or the hold-up involved in the case?

A. Yes.

Q. And just to clarify one point, in 1948 the Quakertown Free Press was still a weekly paper; is that right?

A. Yes.

BY MR. VAN ARTSDALEN: That is all.

(Witness excused.)

BY MR. MARCIOTTI: At this time I would like to introduce in evidence what appears from the Pennsylvania Manual of 1947-48 giving the population of Bucks County.

BY MR. VAN ARTSDALEN: That will be objected to unless it is shown that is an accurate statement of the figures.

Miss A. Patterson—Direct

We would accept the 1940 or 1950 census figures but not those figures of 1947.

BY JUDGE MURPHY: We will take it for what it is worth: The official census figures are in 1940 and 1950 and then the Census Bureau has a time estimate figure and then this is the manual and the estimate is as to what the population of Bucks County was, and in recent years it has been growing and growing. Court already knows that. Go ahead.

BY MR. MARGIOTTI: This shows the population of Bucks County to be 107,715.

BY JUDGE MURPHY: Is Doylestown the city along the Delaware River in Bucks County?

BY MR. VAN ARTSDALEN: That is correct.

(377) MISS A. PATTERSON, called and sworn on behalf of the Relator, on direct- and cross-examination, testified as follows:

DIRECT EXAMINATION.

(Pennsylvania Manual marked "Relator's Exhibit No. 124".)

BY MR. MARGIOTTI: May I state on the record you will find that on Page 860.

Q. Miss Patterson, where do you live?

A. Margate, New Jersey.

Q. Were you in Bucks County subsequent to December 22, 1947 after the Feasterville killing?

Miss A. Patterson—Direct

A. Yes, I was to the trial; I wasn't in Bucks County until the trial.

Q. You were in Bucks County during which trial?

A. The Zietz and—Zietz and Foster trial.

Q. Did you attend that trial?

A. Yes, I did.

Q. How many sessions did you attend?

A. I was there every day and every evening.

Q. Had you been in Bucks County before the trial?

A. No sir.

Q. Do you know how soon after the Foster-Zietz trial the Dacey trial was held?

A. A week.

Q. Were you present at the Dacey trial?

A. No.

Q. You were not?

A. No.

Q. Now while—during the Foster-Zietz trial where did you stay, in what city?

A. The first night I stayed at the Bucks County Inn and they told (378) me I could only stay one night; there was a murder trial and the jurors were staying at that particular hotel and that I can only stay for one night.

Q. Do you know where the jury was staying that was trying Foster-Zietz?

A. They were staying at the Bucks County Inn—Doylestown Inn—isn't it? Doylestown Inn—pardon me!

Q. Miss Patterson, about how many days were you in Doylestown altogether during the Foster-Zietz trial?

A. Pardon me!

Q. About how many days were you in Doylestown altogether during the Foster-Zietz trial?

A. I was there every day in the courtroom except the last day.

Q. Did you have an interest in that trial?

A. Yes, I did.

Q. What was your interest?

A. I was interested for the justice of the three boys.

Q. Were any of them—were you interested in anyone in particular?

A. I was interested in all of them. One of the boys was my nephew.

Q. Which one?

A. Harry Zietz.

Q. Did you come in contact with people who talked about the case—about the boys?

A. I heard a lot of talk.

Q. Just answer my question.

A. Yes.

Q. Did you come in contact—talked with people?

A. Yes.

Q. And will you tell the Court just what you heard people say, not the exact words but the substance as near as you can possibly (379) do it, and the places and the persons to which the conversations referred?

A. Well, the first night I stayed at the Doylestown Inn and I went upstairs to my room and there was no soap or towel in the room; there were three maids standing across in the hall; I went out and asked them if I could please have some soap and towel, and they said "We are so busy; we are so excited; there is three murderers in jail here in Doylestown, and it is just like a carnival." I never answered them. I said "Please let me have the soap and towel."

Q. What else did you hear said about it?

A. And they said "They haven't got a chance in Doylestown because they hate Philadelphia boys and they are very, very bitter."

Q. Who was very bitter?

A. The people. Everyone was bitter and they also—

Miss A. Patterson—Direct

BY MR. VAN ARTSDALEN: I object to that answer. I think the question was as to conversations. I think the witness is responding as to her impressions and not as to the conversations.

BY JUDGE MURPHY: She said so far there were three maids at the Inn; they said "There is three murderers here; everything was like a carnival—just like a carnival; they haven't got a chance in Doylestown, they hate Philadelphians."

BY THE WITNESS: That is right. That is what they said. They said another thing—"and they're going to burn for it."

BY JUDGE MURPHY: The three maids said that?

(380) BY THE WITNESS: Yes.

The next day I went across to Fountain Inn, I got a room there —

BY JUDGE MURPHY: What is the name?

BY THE WITNESS: Fountain Inn.

BY JUDGE MURPHY: All right.

BY THE WITNESS: And there was a man there that lived at the Doylestown Inn. His name—he is deceased since then—he died two or three years ago—and the first day I was coming from the train he was sitting on the porch and I came up and he got up and he said, "Pardon me! Are you one of the boys' mothers?" I said "No, I am not."

He said "Well, this is really a terrible thing." He said "You know, I hate to tell you —" He said, "Why are you interested in this case?" I said "I am interested in all the boys and I am particularly interested to see that they get justice"—I said. He said "Which one belongs to you?" If I go along against the rumors, I will belong to your family." I said "Yes." He said "Well—well," he said, "you know, they are very bitter in Doylestown especially at boys coming here from Philadelphia." He said, "I hate to tell you. I would do everything in the world I could to help." He said "They haven't got a chance before they start; they haven't got a chance."

BY JUDGE MURPHY: That is two conversations. Anything else you heard.

(381) BY THE WITNESS: Well, there was comments outside the court, the men around there. They were all—they were going to get together in a group to go to see the execution. One man said "How does it suit you?" They didn't see me where I was standing in another part of the outside. He said "Well, it suits us fine." He said "We are all going and we are going in a group to see them burn, the three thugs."

BY JUDGE MURPHY: All right; did you hear anything else now?

BY THE WITNESS: I was going another day in court—I don't know whether this enters into it or not—this was the third day of the court. District Attorney Biester had addressed the jury; he was talking to them. And after it was over he come down where we were, Mrs. Zietz and Mr. Zietz and the lawyer Rubin and myself. He said "I

would like to be introduced to these people. Is this Harry Zietz's mother and father?" Mr. Rubin said "Yes." He said "This is Mr. Biester." Mr. Biester was crying—I never—I never saw a man cry harder in my life. And he shook each one of our hands. He said "I am very, very sorry I have to say the words I said. I am very sorry but —," he said, "I want to put your hearts at ease. When it goes to the Pardon Board I will not object in any way." I said "Mr. Biester, you don't realize what that means to us." I said "We are positively heartbroken." He said "You take my word for it," he said, "I will see that they get their justice at the Pardon Board."

BY MR. MARGIOTTI:

Q. Did you hear any other conversations in the court-room?

A. There was another day they had the high school children there. They wanted—the high school children were brought in and I was (382) sitting in front of the group that come in, they sat in back of me, they were young girls. The two boy prisoners were sitting over with deputies. And Judge Boyer said "Children," he said, "I want you to know that there is a murder trial going on in Doylestown and I want you to know these are the two prisoners that are convicted—going to be convicted of murder." And the kids —

Q. He didn't say that —

A. He did so. And the children in the back, they weren't interested any more in what the judge was saying than that chair was. It was the worst thing I could go through. One of the children turned around and said "My father said they are going to burn." I turned around. No one said anything to him. I said "Please keep quiet." I said "Do you know you are in a court."

Then the second day of the trial my sister—we went out for lunch—my sister said "I have a terrible headache; I don't know how I am going to go back to the court." I said "Well—well, we will have a cup of tea and we will go back. Don't put your hat down on your head; put it on top; you keep the hat on in the court." And the jury hadn't come in yet, neither had the judge, the District Attorney Biester was there and the lawyer and myself and Mrs. Zietz and Mr. Zietz. She was sitting beside me. And in a few minutes—she never uttered a word—she slid from the chair and fell on the floor and then her feet were on the chair in front, the seat in front, and she laid there. There was either a nurse or matron sitting in front with us with a white uniform, some kind of uniform, I couldn't tell you what kind, I was too excited. She got up and walked out of the courtroom and my sister laid there and a woman on the right took off (383) her coat and she said "Here, put that under that lady's head." And I took the coat—it was a checked coat—and I put it under my sister's head. Someone said, "We can't do anything about it—we can't do anything about it." I said, "Well, will you please —

BY JUDGE MURPHY: Do you want more of this?

BY MR. MARGIOTTI: No.
That is all.

CROSS-EXAMINATION:

BY MR. VAN ARTSDALEN:

Q. Is it Mrs. or Miss?

A. It is Miss Patterson.

Q. The only reason you came to Doylestown was because of the trial?

Miss A. Patterson-Cross

A. Yes, that is correct.

Q. Now you didn't attend all of the Darcy trial, did you?

A. No, I didn't.

Q. What day did you come to Doylestown?

A. I came the day before the trial. I came the day before.

Q. Do you recall what day that was?

A. I just don't recall exactly. I believe it was a Sunday, but I am not exactly sure of the date.

Q. Do you remember which inn it was you stayed the first night; you said the Doylestown Inn and the Bucks County Inn?

A. It was the Doylestown Inn. I knew exactly where it was. The Doylestown Inn.

Q. You don't know who the three maids were?

A. No; I don't. I didn't even look at anybody. I was too heartbroken to hear a remark like that.

(384) Q. Were the three maids in uniform?

A. I don't know that. They were standing in a group; I went into the room. I was tired. I wanted to get undressed and I wanted to get redressed to go to get my dinner.

Q. You mean you are not sure that they had on any special uniform?

A. I can't tell you that.

Q. How do you know they were maids?

A. I know they were maids. They came in and brought me the soap. They said they were so busy they couldn't do the things they should be doing; they were so busy, everything was in an uproar.

Q. Did she talk to you in your room?

A. No; she said that to me in the corridor.

Q. There were two other girls standing there?

A. There were two other girls standing there.

Q. All right. Did you notice anything out of the way

in and about Doylestown when you first came in on that day?

A. I noticed everybody standing on the corner and everybody was talking.

Q. How many people did you see standing on the corner?

A. There were groups of people on every corner. As a matter of fact, in the mornings I got up at 6:00 o'clock —

Q. I am talking about when you first came into Doylestown.

A. There were groups of people —

Q. When did you first come into Doylestown?

A. I first came into Doylestown on a Sunday, the day before the trial.

Q. What time was that?

A. What time was that —

Q. Yes,

A. It was about 5:00 o'clock.

(385) Q. A warm evening?

A. It wasn't too warm.

Q. Clear weather?

A. Yes.

Q. And there was a number of people on the streets of town, is that correct?

A. Yes I saw the jury coming down the street —

Q. Not the first night —

A. All right. Pardon me!

Q. Did you observe any disturbances at all in Doylestown?

A. Only talking, constant talking.

Q. Only talking, constant talking. You saw no demonstrations of any sort, did you?

A. What do you mean my "demonstrations of any sort?"

Q. You didn't see a group of people getting together — did you — and making any threats toward any of the defendants?

Miss A. Patterson-Cross.

A. They all said that "the boys should get burned."

Q. They all said that "the boys should get burned." What did you think they meant by that?

A. The electric chair.

Q. That is the verdict that the jury brought in, wasn't it; is that correct?

A. Pardon me!

Q. I will withdraw the question. Now you mentioned a man that lived at the Fountain Inn. That means to us the Fountain House —

A. The Fountain House. I don't remember much about the Fountain House.

Q. It is right across from the Doylestown Inn?

A. That is right.

Q. About two or three blocks from the courthouse?

(386) A. Yes sir:

Q. You mentioned you talked to a man since died?

A. Yes.

Q. Do you recall his name?

A. Mr. Goodling.

Q. And what was it he told you—that "it was a terrible thing"?

A. He said he personally "was very much opposed to capital punishment"?

Q. He said he "was very much opposed to capital punishment?"

A. Yes.

Q. What else did he say?

A. He said "If there was anything I can do—but the case is cut and dried before it starts;" He was at one time Dean of the Farm School at Doylestown.

Q. Now then, in the trial itself did you observe any disturbances in the courtroom?

A. No, I only noticed people were laughing; they got a

kick out of it. You would have thought it was some sort of a movie house.

Q. People laughed here in this hearing at various occasions.

A. Not like they did there.

Q. Was the courtroom at any time cleared by order of the Court?

A. No, it wasn't cleared. The day before—the day they were going to pronounce the final sentence Judge Boyer called our lawyer and he said "Who was that woman sitting there? We don't want any emotional people in this courtroom." And Mr. Rubin said, "Well, that is the boy's aunt."

Q. We are not interested in what Mr. Rubin may have said. (387) Now you heard Judge Biester give his closing address to the jury; did you not?

A. No; I did not. I was in the hospital with my sister.

Q. You were not there at that time, is that correct? What part of the trial did you miss?

A. Only that part.

Q. Only his closing address, so you don't know what he said to the jury?

A. I know what he said before that. He asked for the death penalty.

Q. I said what he said to the jury. Now when was it he came over and talked to you—you said there were tears in his eyes?

A. Who came over and talked to me —

Q. Mr. Biester.

A. The third day of the trial.

Q. I thought you said that was after he addressed the jury?

A. Well, he was talking to the jury every day.

Q. Now that was before then the verdict came in, is that correct?

Miss A. Patterson—Cross

A. Yes sir.

Q. And before all the evidence had gone in?

A. Yes.

Q. And he told you at that time then that he would not make any objection —

A. That is exactly what he said—if I never get off this seat alive.

Q. That was before the trial was concluded that he said that he would not object in any way when the matter came before the Pardon Board?

A. That is exactly right—when the matter came before the Pardon Board.

(383) Q. Did anybody say anything to him at that time?

A. We thanked him.

Q. Did anybody say anything to him at that time, Miss Patterson, or anybody in the group heard him say that, indicate why didn't he wait until the trial was over?

A. No, the people were coming over where we sat each day. So we didn't hear any remarks we waited until most of the people were in.

Q. That was the third day of the trial?

A. That was the third day of the trial.

Q. The third day after selecting the jury?

A. The jury was selected. The case was in progress.

Q. Now when was it that Judge Boyer talked to these school children?

A. When Judge Boyer what —

Q. Talked to these school children.

A. I don't know exactly what day it was. It could be the third or fourth day.

Q. Was the jury in there at that time?

A. Yes.

Q. They were there at the time?

A. Yes.

Q. You mean by that he made those statements to the jury —

A. That is what he said.

Q. You mean by that he made those statements to the school children while the jury was present?

A. He said "Those are the prisoners —

Q. What was it he said?

A. He said "We are trying these boys on a murder charge —

Q. Yes. What else did he say?

(389) A. "—Children, I want you to look at the prisoners."

Q. Yes. What else did he say?

A. I couldn't hear much what they were saying. Those children in the back were talking such.

Q. I thought you said on Direct examination he said, "There are two murderers who are going to be convicted?"

A. That is right.

Q. Judge Boyer said that?

A. Yes sir.

Q. While the jury was in the room?

A. While the jury was there.

Q. You are positive of that?

A. I am positive.

Q. Did any of the attorneys raise any objection?

A. They wouldn't allow the attorneys to speak.

Q. Answer my question. Did any of the attorneys raise any objection when Judge Boyer said that?

A. No.

Q. They did not?

A. Because anything they wanted to say they were overruled.

Q. You mean they just sat there?

A. They couldn't do anything.

Miss A. Patterson-Cross

Q. Now, Miss Patterson, did you ever tell that to anybody else before?

A. Yes, I did.

Q. Where and when?

A. Well, my sister knew it.

Q. I said did you ever tell that to anybody else about what took (390) place?

A. Yes, I told Mr. Goodling.

Q. Did you tell any official about it?

A. No, I didn't tell any official about it. He said he knew Judge Boyer very well and he also knew Judge Keller; he also knew Mr. Biester. He called him by his first name.

Q. Miss Patterson, how was the jury brought in in the morning; how did they come in?

A. How did they come in? They walked in.

Q. Did they come in through the main corridors the same way you came in; or did they come in through a side door?

A. They came in through a side door.

Q. How about the defendants; how did they come in?

A. They came in, I believe, from another door in the side.

Q. Also —

A. Like in the middle.

Q. At no time was the jury or the defendants taken through the spectators that were there in the courtroom, isn't that correct?

A. No, that is right.

Q. Where were you seated during the trial?

A. I was seated in the first seat. I think the seats were reserved for jurors, the front, and I was in the first row with Mr. and Mrs. Zietz.

Q. The first row—behind whom were you seated—behind the jury or behind the defense table?

A. I wasn't anywhere—I was seated on the opposite side of the room.

Miss A. Patterson—Cross

Q. Did you sit in approximately the same location every day?

(391) A. Every day I got the same seat.

Q. You had no difficulty getting a seat?

A. No, I didn't have any difficulty getting a seat.

Q. Was the courtroom crowded?

A. Sometimes, and sometimes it was not.

Q. Sometimes it was not. How many times was it not crowded?

A. Quite a number of times.

Q. Miss Patterson. Just one or two other questions. You say you are presently living in Margate, New Jersey. What is your address?

A. 106 South Union Avenue.

Q. How long have you lived there?

A. Twelve years.

Q. Where did you live before?

A. I lived in Philadelphia.

Q. Now you say that you are the aunt, I believe —

A. That is correct.

Q. —of Zietz —

A. Harry Zietz.

Q. —is that correct? Where did you live when you lived in Philadelphia?

A. 929 Fulcrum Street in Frankford. I sold my home there one year after the tragedy.

BY MR. MARGIOTTI: After what?

BY THE WITNESS: After the tragedy of the boy.

BY MR. VAN ARTSDALEN:

Q. How long have you lived in Margate, New Jersey?

(392) A. Twelve years.

Miss A. Patterson-Cross

Q. But you had a home down in Philadelphia during some of the period of that time?

A. No, I sold it. No, we left Philadelphia and I sold my home in Philadelphia in 1948, but I had never been back to it.

Q. You say your sister was in the courtroom with you. That would be Mr. Zietz's mother?

A. That is right; Mr. and Mrs. Zietz.

Q. Was that at all the sessions—all of the sessions?

A. All the sessions; every session; day and night.

Q. You were present while the jury was being selected?

A. No, I was not.

Q. You were not there during that period?

A. No.

Q. Where did you stay while the jury was being selected?

A. The first night I told you I stayed over at the Doylestown Inn.

Q. Were you in Doylestown while the jury was being selected?

A. No; I was not. I came to Doylestown the day before the trial started in the court.

Q. The trial started on Monday, the actual trial?

A. Yes sir. I came to Doylestown on Sunday on a bus.

Q. Well, the jury had already been selected when you first went there?

A. Yes sir.

Q. Can you tell us what day it was?

A. No, I can't. My sister was in Doylestown two weeks before that.

BY JUDGE MURPHY: Did you come to Doylestown on Memorial Day?

(393) BY THE WITNESS: Yes, I did.

BY JUDGE MURPHY: That would be a week after. The trial started on the 24th. The first Sunday after the jury was selected was Memorial Day. Where do you go from there?

It is now 12:35. We will recess until 2:00 o'clock.

(Recess.)

(Court resumes after the recess with all parties, including the Relator, David Darcy, present in Court.)

BY MR. MARGIOTTI: May I present a motion to amend the Petition in accordance with my oral application yesterday. I furnished a copy to the Commonwealth. We are adding after the word "town" "and Bucks County."

BY JUDGE MURPHY: All right. What is the Commonwealth's position?

BY MR. RYDER: The Commonwealth objects to the amendment on the ground that the scope of this hearing is pretty well set forth on Page 409, 203 F. 2d 407, in which it is stated:

"The majority of the court is of the opinion that the relator must be afforded the opportunity to prove the allegations set out in his petition for habeas corpus insofar as they relate to the alleged atmosphere of hysteria and prejudice prevailing at his trial ***"

BY JUDGE MURPHY: Well, of course, we are following out the Mandate and if we don't allow the amendment it would go up to the Circuit Court and they could send it back and start all over—if we (394) don't allow the amendment. What they say in the first place is the hysteria

Miss A. Patterson—Cross

swept the town. If it gets into the air waves it may sweep all over. In order to get into the town it may come in from out yonder. They say during the trial jurors come from — Except with the amendment the same thing is before us. It is tweedle dum and tweedle dee:

BY MR. RYDER: We have stated our position.

BY JUDGE MURPHY: We will allow the amendment because I don't think it changes the situation materially.

I might say here our interpretation is no matter what happened out there, it has to do harm down here in the town in order to have an unconstitutional trial and, therefore, ultimately it is the town from the earthland out yonder.

BY MR. MARGIOTTI: Just take the chair, Miss Patterson.

BY JUDGE MURPHY: You don't have any Order here —

BY MR. MARGIOTTI: I beg your pardon!

BY JUDGE MURPHY: Well, we will just put down on the bottom "Motion allowed."

BY MR. MARGIOTTI: Thank you.

Miss A. Patterson - Cross

MISS A. PATTERSON, recalled.

CROSS-EXAMINATION (continued).

BY MR. VAN ARTSDALEN:

Q. Miss Patterson, you said your name was A. Patterson. What is (395) your full name?

Miss Agnes L. Patterson.

Q. You testified, I believe, you came to Doylestown on Sunday?

A. I believe—wait a minute! I think it was Decoration Day.

Q. It was Decoration Day. I believe Decoration Day was on Sunday.

A. That is right.

Q. And was there any court the next day after you came?

A. Yes, the court was the next morning.

Q. Now, Miss Patterson, if I say to you the records indicate the court did not convene on Monday, June 1, would you still say there was court on that Monday?

A. As far as I can remember.

BY JUDGE MURPHY: The record says there was not Memorial Day fell on Sunday and was celebrated by the court on Monday, and when the court adjourned on Saturday it adjourned to meet on Tuesday.

BY THE WITNESS: It was the first day of the court.

BY MR. VAN ARTSDALEN:

Q. You say the first day of the court. Do you mean you came there the first day the trial itself commenced?

Miss A. Patterson—Cross

A. Yes sir.

Q. You are positive of that?

A. I am positive of that.

Q. Now the records indicate that the trial itself started after the jury was selected Thursday, May 27. Were you in Doylestown before Memorial Day?

A. I was in Doylestown after Memorial Day.

Q. And not before?

A. No.

(396) Q. How many days of trial did you actually go to court?

A. Monday; Tuesday; Wednesday and Thursday.

Q. Again I call your attention to the fact there was no court on Monday.

A. Then it was Tuesday, Wednesday and Thursday.

Q. Were you there when the verdict came in?

A. No, I was not.

Q. What—when you came into court do you remember who the first witness was that was called?

A. No, I can't remember that.

Q. Was there a man brought in in a wheelchair—the first witness brought in in a wheelchair?

A. I remember the man in the wheelchair.

Q. Was he the first witness that was called when you came in?

A. I don't believe.

Q. Do you know whether his name was Allen Hellerman?

A. That was the name.

Q. If I say to you the record indicates that Allen Hellerman was the first witness called on June 1, 1948, would that refresh your recollection?

A. Well, that would be —

BY MR. MARGIOTTI: There was no court on June 1.

Miss A. Patterson--Cross

BY JUDGE MURPHY: Decoration Day falls on the 30th of the month. There are thirty-one days in May. Monday, June 1; Tuesday, June 2.

BY MR. VAN ARTSDALEN:

Q. Would you agree Allen Hellerman was the first witness you heard called?

A. Hellerman--wasn't it?

(397) Q. Yes.

A. Yes.

Q. That was the first witness you heard called?

A. Yes.

Q. So that if there were any witnesses called before that date you didn't hear them testify?

A. No, I did not.

Q. Now then, you testified you got a room at the Doylestown Inn?

A. That is right.

Q. On Memorial Day?

A. Yes.

Q. And that you were told you couldn't stay there because there was going to be a jury--what was it?

A. They were there.

Q. The jury was there at the time?

A. Yes.

Q. How was it they gave you a room if the jury was there at the time?

A. They gave me a room because they had a vacant room for one night. They said I could stay because I was from out of town but I would have to get another hotel.

Q. So that the jury was already there?

A. Yes.

Q. Isn't it a fact the trial was already in progress when you first arrived in Doylestown?

Miss A. Patterson—Cross

A. I don't recall that at all. I thought I was there the first day of the trial.

Q. And I think you testified at one time on direct examination you were there the second day before the trial?

A. No; I did not say I was there before the trial.

(398) Q. Well did you come there on Sunday or did you come there the second day before the trial?

A. As far as I remember, it was either Decoration Day or Sunday. I really think it was on Decoration Day.

BY JUDGE MURPHY: Well, May 30 would be Decoration Day and would be celebrated on Monday. That is the 31st.

BY THE WITNESS: It was Decoration Day because I remember I was afraid I wouldn't be able to get a bus. I had to make connections.

BY MR. VAN ARTSDALEN:

Q. Why did you come to Doylestown at that particular time?

A. I came so that I would be in Doylestown for the opening of the trial.

Q. You knew the jury had been selected?

A. Yes, because Mrs. Zietz was there two weeks previous to that.

Q. You had been informed of that?

A. The jury was at the Doylestown Inn. They were registered there and they were eating there.

Q. You didn't know that before you came to town?

A. I saw them in the dining room.

Q. You came to Doylestown as a result of the information that you received from Mrs. Zietz?

A. No, I didn't get any information from Mrs. Zietz.

Miss A: Patterson—Cross

Q. From whom did you get the information the jury had been selected?

A. Well, I knew the trial was the next day. The jury would have to be selected.

Q. Madam, the record indicates it took several days to select the jury. You said you were there during that period of time.

A. I wasn't there in Doylestown while they were selecting the jury.

(399) Q. How did you know when the jury was selected; how did you know when the trial was going to commence, as you said?

A. Because a friend whom we know in Philadelphia that knew a man here in Doylestown, called me from Pleasantville to tell me the trial was going to commence and I should go up.

Q. It was as a result of information you received from someone?

A. Yes.

Q. Where did you go when—what was the last day you attended any of the trial?

A. The last day I attended any of the trial was on a Thursday.

Q. A Thursday. Was that an evening session or afternoon session?

A. It was the afternoon session.

Q. And where did you go after that?

A. I went to the hotel and went to my room.

Q. When did you check out?

A. We checked out on Friday. We took my sister down to Wildwood on Friday.

Q. Was that Friday morning or afternoon?

A. Well, Friday about noon.

Q. At that time the verdict had not been rendered yet?

Miss A. Patterson - Cross

A. Oh yes, the verdict had been rendered.

Q. You say you know the verdict had been rendered before you left Doylestown?

A. Yes.

Q. What time did you leave Doylestown?

A. We left Doylestown in the afternoon sometime. I don't know (400) exactly the minute.

Q. I think you testified you stayed at the Fountain House after the first night you were at the Doylestown Inn; is that correct?

A. That is right.

Q. Now you testified you saw the jury in the dining room. What dining room was that, please?

A. In the Doylestown Inn.

Q. On what day?

A. On the first day I arrived in Doylestown.

Q. And were there not uniformed tipstaffs in charge of them?

A. I didn't notice them. They were at a long table in the back of the dining room.

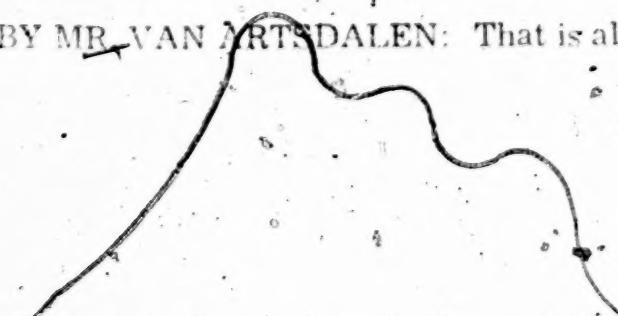
Q. Separate from anyone else?

A. Yes sir. They also told me I would have to wait some time for my dinner because the jurors were getting served and they got served first.

Q. And apart from anyone else?

A. Yes sir.

BY MR. VAN ARTSDALEN: That is all.



Miss A. Patterson—Re-direct—Re-cross

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Miss Patterson, this incident in which you said some children appeared from the schools or high schools —

A. Yes.

Q. Do you remember what day that occurred?

A. It was several days.

Q. Do you remember the day it was you attributed those remarks to Judge Boyer that you testified to this morning?

A. I would say—it was on Wednesday.

(401) Q. Wednesday?

A. Yes sir, because I was not in the court the next day.

Q. That would be the second day of June?

A. Tuesday was the first, yes.

BY MR. MARGIOTTI: That is all for the time being.

RE-CROSS EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. I have a couple of questions. You say this occasion that Judge Boyer spoke to the children on Wednesday —

A. Yes sir.

Q. You fix that because you weren't in court on Thursday; is that correct?

A. As far as I can remember, I know the children were in two or three days. I know the day that the judge was lecturing I couldn't hear what the judge was saying.

Q. Well, you have testified what the judge said?

A. I know—I couldn't hear the other part of it because the children were talking.

Miss A. Patterson—Re-cross

Q. You were not in court on Friday; you testified to that?

A. As far as I can remember, yes.

Q. Take your time. I don't want you to say anything that is not correct. Court started on Tuesday. Were you there on Tuesday?

A. Yes sir.

Q. This statement you attributed to Judge Boyer occurred on Wednesday?

A. Yes sir.

Q. You testified you were not in court on Thursday?

A. No.

(402) Q. Or on Friday?

A. I was in court on Thursday until my sister was taken out and I went with her.

Q. When was that?

A. Thursday.

Q. What time?

A. After we came from lunch.

Q. In the afternoon?

A. It was right after we came from lunch.

Q. Why did you testify on direct-examination that you weren't in court on Thursday?

BY MR. MARGIOTTI: We object. That is not what she said.

BY JUDGE MURPHY: The objection is overruled.

BY THE WITNESS:

A. Because I was confused about the day Monday.

BY MR. VAN ARTSDALEN:

Q. All right. Then you were in court on Tuesday, Wed-

niesday and Thursday morning and part of Thursday afternoon?

A. Yes sir.

Q. Is that all you were in court during the trial?

A. Yes sir.

BY JUDGE MURPHY: If you weren't there after your sister had this attack and if you weren't there until Tuesday when did you hear the District Attorney making a plea and asking for the death penalty?

BY THE WITNESS: He was talking to the jury.

BY JUDGE MURPHY: (403) When?

BY THE WITNESS: He was addressing the jury. Every day he had something to say to them.

BY JUDGE MURPHY: While you were there you heard him asking for the death penalty?

BY THE WITNESS: Yes sir.

BY MR. VAN ARTSDALEN: That is all.

RE-DIRECT EXAMINATION

BY MR. MARGIOTTI:

Q. Will you state whether or not that was before the crippled man was brought into the courtroom, or after?

A. It was after.

Q. Were you there when the District Attorney opened his case to the jury?

Miss A. Patterson—Re-direct

A. Yes.

Q. You know who opened for the Commonwealth—do you know what I mean by "opening" —

BY JUDGE MURPHY: What date does the record show the opening?

BY MR. VAN ARTSDALEN: I will get that in just a moment.

BY JUDGE MURPHY: Let's get the date. I want to follow you.

BY MR. VAN ARTSDALEN: The jury was sworn on the 28th, according to the record.

(404) BY JUDGE MURPHY: All right; that would be Friday.

BY MR. VAN ARTSDALEN: "Edward G. Biester opened the case for the Commonwealth the 28th at approximately 5:02 o'clock."

BY JUDGE MURPHY: You have yourself saying you didn't get there until the 30th and you heard the opening.

BY THE WITNESS: I know he spoke to the jury. I am sorry. I don't know very much about the courts. I know that the District Attorney Biester spoke and I know what he said.

BY MR. MARGIOTTI: That is all.

(Witness excused.)

MR. W. LESTER TRAUCH, recalled.

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Trauch, I want to show you "Relator's Exhibit No. 51" and show you a photostatic copy of the issue of the Doylestown Daily Intelligencer dated Friday afternoon, May 14, headed: "Four Murder And Four Manslaughter Trials Listed." Do you see it there in the center?

BY JUDGE MURPHY: What was the date?

BY MR. MARGIOTTI: 5-14-48.

BY THE WITNESS:

A. Yes, I see it.

BY MR. MARGIOTTI:

(405) Q. Do you know whether you wrote that article?

A. I do not.

Q. Do you know who wrote it?

A. It would be either Mr. Thomas or myself. But this story has so little color that I can't tell which one wrote it.

Q. What do you mean by "color"?

A. It has absolutely no description or anything, just plain matter of fact.

Q. There is no by-line to it?

A. No.

Q. I show you "Relator's Exhibit No. 55," and I refer you particularly to the issue of Monday afternoon, May 24,

A. Russell Thomas--Re-direct

1948, headed: "Feaste ville Murder Case Defendants Go On Trial." Can you tell me who wrote that?

A. No, I can't.

Q. All right. You didn't write it?

A. I can't tell you, sir.

Q. All right, sir.

BY MR. MARGIOTTI: That is all.

BY THE COURT: Any cross-examination?

BY MR. VAN ARTSDALEN: No sir.

(Witness excused.)

MR. A. RUSSELL THOMAS, recalled.

RE-DIRECT EXAMINATION:

BY MR. MARGIOTTI:

Q. Mr. Thomas, I show you "Relator's Exhibit No. 51," being the issue of your paper of Friday afternoon, May 14, 1948, and a (406) story headline: "Four Murder And Four Manslaughter Trials Listed." Will you look that over and tell me, if you recall, whether you or who wrote that article?

A. Well, for a positive answer I can hardly tell. This is part of the preliminary to the opening and a lot of these stories like this one were probably phoned in from the courthouse to a re-write man on the desk. I can't tell from the style of writing whether it was mine or not. It was just a routine story taken from the court calendar.

Q. This exhibit is in evidence and I am going to call your attention only to a certain phase of it and ask you if you know where this information would come from: "Four murder cases are listed on the docket for the May term of county criminal court that ~~opens next~~ Monday, but only two will be tried during the approaching term?"

A. Well, that information could come from the District Attorney, Mr. Bigster, who I also asked questions. It could come from the Clerk of the Quarter Sessions. "Only two will be tried"—that certainly should come from the District Attorney's office, and I think it did.

BY JUDGE MURPHY: Do you know?

BY THE WITNESS: I would say yes.

BY MR. MARGIOTTI:

Q. I show you "Relator's Exhibit No. 55," being a photostatic copy of the front page of your paper of Monday afternoon dated May 24, 1948, the headline being: "Feasterville Murder Case Defendants Go On Trial." Now do you know who wrote that article?

(407) A. I believe I wrote that article. I am not certain but I will say that I believe I did.

Q. I observe in the article a statement stating: "The Feasterville Tavern murder cases got under way this morning in county criminal court * * * Only two of the defendants charged with the murder will go on trial this term." Where did you get that information?

A. Well, I certainly got it in the courtroom that morning that I wrote the story. I don't know what individual I got it from.

Q. Well, do you know or how it happened that the Darcy

A. Russell Thomas—Re-direct

case was also tried that particular term, to wit, beginning June 7—I believe was the date—1948?

A. I have no regular way of knowing it; only from the information I received I was led to believe —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: You are asked do you know? Do you know why they did it?

BY THE WITNESS: I will say no.

BY MR. MARGIOTTI:

Q. Information received from whom?

A. Who I might have asked —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: We will take it.

BY MR. MARGIOTTI:

Q. Did you receive any information from any public official or any source in authority?

(408) A. I can't tell you who from. But I certainly wouldn't make that statement unless I asked the District Attorney or somebody.

BY JUDGE MURPHY: Answer the question. Did anyone tell you why they called the Darcy trial when they called it?

BY THE WITNESS: No.

A. Russell Thomas—Re-direct

BY MR. MARGIOTTI:

Q. Did you at any time publish any reason in any of these exhibits that are here in Court—did you publish any reason for his calling the Darcy trial on June 7?

A. Not that I can recall, Mr. Margiotti.

Q. All right; that answers the question. Now I show you "Relator's Exhibit No. 93," and I call your attention to that part of the exhibit that says: "We Noticed." Do you know who writes that headline—who writes that line?

A. You mean the contents underneath the headline—

Q. Yes.

A. Well, we all wrote that; anybody on the staff.

Q. I see —

BY JUDGE MURPHY: What is the date of the issue?

BY MR. MARGIOTTI: Friday, June 11, 1948.

Q. Now I am going to ask you this: There appears under "We Noticed" the last item reading as follows:

"In a Philadelphia newspaper column, the following excerpt: 'So many murder trials are cluttering the Bucks County criminal docket that Doylestown High School graduates won't be able to hold their commencement exercises in the ancient court house. Instead they will be graduated outdoors.' " Do you see that?

A. I see that.

Q. Do you know in particular who wrote that?

A. I can not say definitely, Mr. Margiotti. I didn't myself.

Q. Will you state whether or not for the week of June 7, 1948 the graduation exercises for the Doylestown High School graduates was scheduled to be held in the big court house?

A. Russell Thomas—Re-direct

BY JUDGE MURPHY: If you know.

BY MR. MARGIOTTI: If you know.

BY THE WITNESS:

A. No, I don't know definitely. I would have to refer back to records or files or something. I don't know. I wouldn't want to say.

BY MR. MARGIOTTI:

Q. Do you know whether the exercises were held that year?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: It may throw light. I don't see how. But it may. We will take it. When did they graduate in their class at the Doylestown High School in 1948, if you knew.

BY THE WITNESS: I can't give you the exact date. There was a graduation but I don't know when.

BY JUDGE MURPHY: (410) Do you know where the exercises were held?

BY THE WITNESS: Yes.

BY JUDGE MURPHY: Where?

BY THE WITNESS: They have been held every year. They have never been without a graduation.

A. Russell Thomas—Re-Cross

BY JUDGE MURPHY: Where were they held?

BY THE WITNESS: I do not know.

BY MR. MARGIOTTI: That is all.

RE-CROSS EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Thomas, when you wrote that article concerning the cases that were listed, that is there would be only two cases listed; you wrote that on the basis of information you received?

A. That is correct.

Q. You don't know—you didn't know whether at that time the information was accurate or not?

• A. I did not.

Q. And you still don't know at this time actually from whom you got that information?

A. That is right.

Q. Or whether it was obtained from any public official?

A. That is right.

BY MR. VAN ARTSDALEN: That is all.

(411) BY MR. MARGIOTTI: Will the Court grant me a few minutes?

A. Russell Thomas--Re-direct

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Thomas, I show you "Relator's Exhibit No. 16"—

BY JUDGE MURPHY: Date?

BY MR. MARGIOTTI:—being the date of December 26, 1947, the headline on the front page: "Murder Now Faces The Four Bandits." Will you state whether or not that is your article?

BY THE WITNESS:

A. Yes, it is. I didn't write the headline, I wrote the article.

BY MR. MARGIOTTI:

Q. I notice in the article this statement:

"Feeling Runs High

"The general feeling of the public—in Bucks county at least—appears to be that no time should be spared in bringing the youthful bandits to trial, and that it is a 'break' for society at large to have the trials in Bucks county rather than in Philadelphia." Did you —

A. May I see it a minute?

Q. Pardon me! The last part of what I read appears on the second page of that exhibit, about three or four lines.

BY JUDGE MURPHY: To keep the record straight, is there any second page to that exhibit, or is it a distinct number?

A. Russell Thomas—Re-direct

BY MR. MARGIOTTI: (412) Judge, as I have it here it is "Exhibit No. 16" and "Exhibit No. 17." "Exhibit No. 16" is the front page and "Exhibit No. 17" is a second page.

BY THE WITNESS:

A. I am going to answer that by saying this: That I am quite sure that I wrote most of that article. Whether I made that statement or wrote that paragraph where it said about the "break" or not, I am not quite certain because at that time we had an editor on our paper who sometimes put a little extra copy in the story and a little extra color. And it doesn't sound like me to put that in there. I would say I did not write that in it but it was written by someone in the office.

BY JUDGE MURPHY: What you call editorializing in his column.

BY THE WITNESS: That is right.

BY MR. MARGIOTTI:

Q. Well, did what you say refer to everything I have read that "Feeling Runs High," or was it only a part of that?

A. I am quite certain that I didn't comment editorially on any newspaper article I ever wrote on that trial, and I would say I did not write that part.

Q. It is your opinion that "Feeling Run's High" was written by your own editor?

A. It was written by someone in the office, not me.

Q. Not you?

A. Not me.

A. Russell Thomas--Re-cross

Q. Who was the editor at the time?

A. George S. Hotchkiss.

(413) Q. He is the man with the heart condition?

A. That is right.

Q. Now I show you "Relator's Exhibit No. 31." Will you state now who wrote the editorial on the editorial page entitled "Who'll Be The Next?" That is the paper of Monday, February 2, 1948.

A. Yes sir.

Q. And "Exhibit No. 31?"

A. I can not say, Mr. Margiotti, because I did not see it written. I knew who wrote the editorials but I can't say positively whether it was written by Mr. Hotchkiss or not. I didn't write it.

Q. You didn't write it. Do you know particularly who handled the editorial that said: "It would be lamentable if citizens were forced to take the punishment of them into their own hands?"

A. I don't know who wrote it. The man who wrote the article, I suppose. But I can't name him definitely.

BY MR. MARGIOTTI: That is all.

RE-CROSS EXAMINATION

BY MR. VAN ARTSDALEN:

Q. I just want to ask you one general question. On any of these articles where you purport to quote what was said in court are those quotes to the best--were they made accurately at the time, to the best of your ability?

A. To the best of my ability.

BY MR. MARGIOTTI: There are some more articles I am just calling attention for cross-examination purposes.

A. Russell Thomas - Re-direct

(414) BY JUDGE MURPHY: We will read them all. They are in evidence.

BY MR. VAN ARTSDALEN:

Q. Mr. Thomas, I did want to call your attention to "Relator's Exhibits Nos. 98 and 99," an article headed: "Ask Death Penalty By The Darcy Jury," which is continued on later on "Relator's Exhibit No. 99," and ask you whether you wrote that article?

A. Yes, I wrote that.

Q. Mr. Thomas, in there there are various quotes attributed to the closing address of District Attorney Edward G. Biester. Did you write those quotations?

A. To the best of my ability.

Q. And do you recall whether or not that Mr. Biester said at the close of his speech:

"The responsibility is yours now: decide it on facts and not emotion. There is only one penalty for you to decide, and that is penalty of death?"

A. I remember that distinctly.

Q. And did Mr. Biester so state?

A. He did.

BY MR. VAN ARTSDALEN: That is all.

RE-DIRECT EXAMINATION

BY MR. MARGIOTTI:

Q. And how many years of experience have you had in court reporting?

A. About thirty-five.

Q. How old are you?

Knickerbocker Davis—Direct

A. I will be sixty my next birthday.

(415) Q. What education have you had?

A. Well, the tough way—well I graduated from high school and from a business college at Philadelphia and the rest was on newspaper experience since I was seventeen.

BY MR. MARGIOTTI: That is all.

(Witness excused.)

MR. KNICKERBOCKER DAVIS, called and sworn on behalf of the Relator, on direct and cross-examination; testified as follows:

DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. What is your full name?

A. My first name is Leicester; my middle name is Knickerbocker; Davis is my last name.

Q. Where do you live?

A. I live in Doylestown.

Q. How long have you lived there?

A. I came to Doylestown on December 13, 1947.

Q. And have you been living in Doylestown since that date?

A. Yes sir.

Q. Do you remember the incident of the killing at Feasterville—the robbery and killing?

A. Yes sir.

Q. Do you remember the trials of Foster and Zietz?

A. Yes sir.

Q. And Darcy?

A. I remember Darcy not so well as the other two, but I was present, I think, one day at the Darcy trial.

(416) Q. I want you to state after it was brought to your attention that there had been a killing at the Feasterville Inn, what, if anything, did you do?

A. Well, I think perhaps I had better tell why I did what I did —

Q. First, tell what you did and then you can tell why.

A. I contacted various people within the locality to ascertain their reactions to the impact of crime. I think you better know why I did that because I just didn't go out and do it wilfully —

Q. Why did you do it?

A. I am a journalist, a magazine writer. I came to Doylestown in 1947 to complete a historical novel that I had started, and before that I had been a war correspondent.

Q. Before that you had been a war correspondent?

A. An accredited war correspondent in this country. I traveled 21,000 miles in twenty-four-states and wrote upwards of a hundred articles on the various phases of the service.

Q. Were you in the service?

A. Lieutenant-Commander in the Temporary Reserve of the United States Coast Guard. My designation to active duty was as Public Relations Liaison Officer of the Fourth Naval District.

Q. What war was that?

A. World War II.

Q. Did you do anything in World War I?

A. In World War I I was recommended for a captain's commission in the Military Police. I passed my examination for it and I was told I was on the list for embarkment

immediately assigned overseas. The message was evil. I was ill throughout most of the war. I got well toward the end of the war, and I received word from the Chief of Staff that my commission was about to be granted but had been withheld because of the end of the war.

(417) Q. What was your purpose in making the survey?

A. I had long been intending—I had been vitally interested for a great many years in the causes of juvenile delinquency as they lead to youthful crimes of violence. I had had experience with police departments. In my work as journalist I had covered the Philadelphia Bureau of Police. I had been privileged to ride with the bandit patrols and see the police work in their various phases. I had broadcast. I was a news commentator at that time for the Public Ledger. I was the radio reporter.

Q. The Public Ledger, Philadelphia?

A. Yes sir. Sunday photographer, rotogravure section, I was designated.

Q. Let's get down to what you did.

As I came up here to write an early American naval novel I had long been turning over in my mind throughout the years, probably evolving into a book on the responsibility of society as regards youthful crime.

Q. Let me ask you right here: At any time while you were making this survey, or whatever you call it, did you know anyone of the four defendants?

A. No sir. As individuals, to be perfectly truthful with you, I wasn't interested in them other than—I might differentiate—he had a share in part of this crime.

Q. In making the survey where did you go—what parts of the County?

A. I wanted to get in my mind—you must understand I wasn't doing this as a matter of record for any such thing as is taking place here—and I wanted to get an impression

of the public reaction to a thing of this sort, society's reaction, that could be used as background material to have what I wanted. I had lived in Bucks County before that from 1907 to 1925. I had—I thought I knew Bucks Countians pretty well. As a matter of fact, I (418) organized the Society for the Prevention of Cruelty to Animals in Bucks County and was the State Agent for the Society for the Prevention of Cruelty to Animals, and my work and animal prosecution cases before the Minor Judiciary took me all over the County. I made arrests. I have the power to make arrests.

Q. Arrests on that

A. That took me all over Bucks County.

Q. That took you all over Bucks County.

A. I thought I knew Bucks Countians pretty well.

Q. Did you go to Feasterville?

A. No sir.

Q. Did you participate in getting the feeling in Feasterville?

A. No. To get the kind of reaction I wanted—I wanted to get an uncolored reaction; that is, I knew in Feasterville I would find —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: We will take it.

BY THE WITNESS: I felt in Feasterville I would get a very decided reaction. That wouldn't be a normal one, so far as what I wanted. So I confined myself to Doylestown and its environs, and I think I went out as far as New Hope and north for a bit, and gained certain impressions which I intend to use in my work. I certainly didn't intend them to be a record of this kind.

BY MR. MARGIOTTI:

Q. In your conversations in your work that you did did you converse with people?

A. Yes, I did.

(419) Q. And will you state whether or not those conversations related to the Feasterville killing and the responsibility therefor?

A. Yes, they were to obtain the information that I wanted. I didn't care to have them know I was questioning them for a record. I brought it up casually and obtained their reactions to it as best I could.

Q. In doing that about how many people did you interview in the County?

A. Well, I would say—I don't want to be too definite about it—I would say probably 100, probably 150.

Q. And in interviewing them did you precipitate the conversation by asking questions, or did they tell you things?

A. No, I wanted to get their reactions so I usually asked a question as to their opinion of the case, what they thought about it, and I thought it was pretty bad myself.

Q. Will you state what was said to you?

BY MR. VAN ARTSDALEN: I object to the conversations.

BY JUDGE MURPHY: We will take it subject to the objection.

BY MR. MARGIOTTI:

Q. What was said to you?

A. Well, six years is a good long time ago —

Q. I don't want your exact words. Nobody can give

exact words. But the substance. As near as you can recall give the substance of the conversations.

(420). A. I should say the people I talked with were shocked, first of all, and outraged —

Q. Go ahead..

A. —and I heard some wild talk—I think there has been plenty of it—that I didn't take too seriously. We certainly aren't a lynching community up there. I can't imagine anybody in Bucks County going out and lynching anybody. People may have said they would like to lynch them. I heard a lot of reckless statements. —

Q. Tell us what you heard.

A. Mr. Margiotti, it would be very difficult to tell you word for word what I heard.

Q. Not word for word; in general what you heard.

A. I would say a large percentage of the people that I talked with were outraged and they thought there should be very drastic punishment meted out to these people. They would like to see it, certainly would have enjoyed seeing it themselves, I guess, some of them said.

Q. Was there anything said of any threatening nature?

A. You mean of participating in a mob scene —

Q. Yes.

A. No, I don't think—I don't think Buck Countians would threaten anybody. They might say they would.

Q. What else was said about these boys?

A. I heard people say—I am remembering fragmentary conversations that may not be accurate over this period—there was reference made "Hope they would get the hot seat." "They would like (421) to see them taken out and shot." This was reckless talk. "They would like to see them strung up." I heard plenty of talk of that sort.

Q. What percentage of those people that you have interviewed would you say engaged in antagonistic talk against the defendant and others?

A. I was trying [redacted] figure that out just last night, sir. I know that facts are very important things in cases of this kind, and I made a point within the last several days of querying seven people that I know—men that I know—that I had remembered one of them particularly at that time, the time of the murder and trial, had expressed himself, and I asked then, laughingly—do you wish me to say what I said to them?

BY JUDGE MURPHY: How he approached them if it refers back to the time of the trial.

BY THE WITNESS: Well, I opened my conversation with them by saying "Everybody is getting a soft spot on them up here? Are you getting one too?" They said they weren't; these particular people weren't. There has been a restoration of interest, of course, in this publicity given this present hearing, and these men were queried. I asked them if they felt now—they spoke rather varied, seven of them—if they felt now as they did in 1948 and 1947, and they said they did.

BY MR. MARGIOTTI:

Q. What did they say?

A. Well, there was one thing brought up by one man

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: What did they say back in 1947?

(422) BY THE WITNESS: I couldn't remember in 1947 what they said. I asked them if they felt now as they did then and how they felt now. They were varied in their ex-

pressions: Quite positive, four of them; three were not. There were seven.

BY MR. MARGIOTTI:

Q. What did they say?

A. Now —

Q. Yes. You said they felt the same way as in 1947 and 1948.

A. I had one businessman say "I feel now as I did then God damn it, there shouldn't have been a trial." That is what he said within the last several days. I said "What do you mean 'There shouldn't have been a trial?'" He said "They should have been taken out and shot."

BY JUDGE MURPHY: This is 1954, as I take it, in the month of March?

BY THE WITNESS: Yes sir.

BY MR. VAN ARTSDALEN: I assume my objection goes to all of these questions.

BY JUDGE MURPHY: Yes.

BY MR. MARGIOTTI: As I understand the witness, he is saying what the man said in the month of March.

BY JUDGE MURPHY: He says he has no recollection of what they said, and he is now coming into Court and violating the hearsay rule now saying what somebody he is not naming said to him—who can (423) be subpoenaed and brought here for cross-examination.

BY MR. MARGIOTTI: He is saying what somebody

Knickerbocker Davis—Direct

told him in the month of March as to how he felt in 1947 and 1948.

BY JUDGE MURPHY: If he did, it would be hearsay and a statement of conclusion as to his feelings back there moved out of time and circumstance. That is what it amounts to. And the person subject to call and process, and the man knows his name, and can be called here for cross-examination. That is where we stand now. Proceed.

BY MR. MARGIOTTI:

Q. Without you answering this question—how many men have you interviewed in the last few days that have given you their feeling as it was in 1947 and 1948? Just answer how many.

A. Seven.

Q. And do you know the names of those seven men?

A. Yes sir.

Q. I see. Now don't answer this question until you are told to do so or not to do so by the Court and abide by the Court's ruling. Will you tell us what the seven men have said to you about how they felt in 1947 and 1948? Don't answer —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: Who had you go to these seven men?

BY THE WITNESS: Who had me go to these seven men?

(424) BY JUDGE MURPHY: Yes sir.

BY THE WITNESS: No one, sir.

BY JUDGE MURPHY: You went of your own accord?

BY THE WITNESS: I went, sir, because —

BY JUDGE MURPHY: I say—did you go of your own accord?

BY THE WITNESS: Yes sir.

BY JUDGE MURPHY: At that time did you know you were to be a witness in this proceeding?

BY THE WITNESS: Yes sir.

BY JUDGE MURPHY: When were you subpoenaed?

BY THE WITNESS: I don't remember the date.

BY JUDGE MURPHY: Are you engaged as an expert or as an ordinary witness?

BY THE WITNESS: I am acting as an ordinary witness, so far as —

BY JUDGE MURPHY: You don't know?

BY THE WITNESS: I imagine I am acting as an ordinary witness.

BY JUDGE MURPHY: (425) You don't know; you haven't discussed it?

BY THE WITNESS: I don't know; no.

Knickerbocker Davis—Direct

BY JUDGE MURPHY: After you get the subpoena you went around and talked to seven people?

BY THE WITNESS: Yes sir.

BY JUDGE MURPHY: Those peoples' names you are ready to give the Court?

BY THE WITNESS: Yes sir.

BY JUDGE MURPHY: Why shouldn't the Court have the benefit of those people? You are having this man interpret their feelings when they are available.

You object?

BY MR. VAN ARTSDALEN: Yes sir.

BY JUDGE MURPHY: The objection is sustained. We will be glad to hear those people but they ought to be subject to cross-examination.

BY MR. MARGIOTTI: All right.

Q. We will go back now to what the situation was up to the time of the Darcy trial; the 150 that you saw; what percentage?

A. I won't say 150.

Q. About?

A. Between 100 and 150.

Q. Of the ones you saw, what percentage would you say were (426) antagonistic to the defendant?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained!

BY MR. MARGIOTTI:

Q. What percentage would you say —

BY JUDGE MURPHY: That is an attempt to have the witness state a conclusion without the basic facts, which would be worthless.

BY MR. MARGIOTTI:

Q. Have you told all that those people told you, those 100 or 150?

A. Told all —

Q. Yes.

A. All that I can remember.

Q. And what was—with reference to the conversations, how did they run over the County; were they any different in any locality?

A. Oh, I couldn't tell —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: We will take it.

BY THE WITNESS: I couldn't tell.

BY MR. MARGIOTTI:

Q. What was that?

A. I couldn't tell, sir.

Q. Have you told now in substance what they said?

A. Yes, I think so, as I can remember.

(427) Q. Take the percentage of the ones that you interviewed, what was the percentage that come within the

Knickerbocker Davis—Direct

classification of those who made statements such as you have indicated?

A. I think it would be rather difficult to estimate over this period —

Q. That you estimate —

A. I should judge between 50 and 60, maybe 70%.

Q. Where were you during the Foster-Zietz trial?

A. I lived in Doylestown, where I do now.

Q. Did you read the newspapers?

A. Yes, as thoroughly as I read them, many of them. Yes, I read them.

Q. Will you state whether or not there was any difference in the sentiment prior to the Foster-Zietz trial than it was during the Foster-Zietz trial?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained unless he gives basic facts upon which he is attempting to state a conclusion.

BY MR. MARGIOTTI:

Q. You were there during the Darcy trial?

A. I was there a very short time—one day I should think.

Q. And while you were there during the Darcy trial, did you talk to persons?

A. Well, I imagine I did, as you would talk—yes, I did—I can't recall the conversations.

Q. Yes. Now, Mr. Davis, will you state whether or not there was any difference in feeling between that existing during the Foster-Zietz trial and that existing during the Darcy trial?

(428) BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained. He can give basic facts.

BY MR. MARGIOTTI: This feeling that you have described in interviewing these various persons, will you state how long that existed?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained unless he shows that he knows and that is the reason for it and the basis. The witness is now asked how long did somebody have a feeling —

BY MR. MARGIOTTI: I didn't ask him that. I am asking him how long that general feeling existed.

BY JUDGE MURPHY: The objection is sustained on the basis of the present state of the record.

BY JUDGE WATSON: What general feeling do you mean?

BY JUDGE MURPHY: The feeling he testified to.

BY JUDGE WATSON: I don't think he told what the feeling was.

BY JUDGE MURPHY: He said they thought punishment should be meted out; there was no mob; some said "They would like to see them taken out and shot and strung up."

BY MR. MARGIOTTI: That is what he said.

Knickerbocker Days—Direct

(429) BY JUDGE WATSON: That isn't sentiment.

BY MR. MARGIOTTI: That is what I call it.

BY JUDGE WATSON: I don't call that sentiment.

BY MR. MARGIOTTI: The Court has stated—

BY JUDGE MURPHY: Out of a county where you have already shown there were 100,000 people the man says he talked to between 100 and 150, that he didn't go where he would get a normal reaction, he went elsewhere, and then he said that 50 to 60% of 100 to 150 out of 100,000 said something. That is where the record stands.

BY MR. MARGIOTTI: That is all he can testify to. That is all he did.

Q: Will you state whether or not you know when was the last time prior to the Foster-Zietz trial that anybody said—made statements to you such as you have already testified to?

A. I couldn't give an accurate answer to that, Mr. Margiotti.

Q. State how long before the Foster-Zietz trial it was approximately the last time that you heard statements such as you have already testified to.

A. I wouldn't want to say accurately. I couldn't say accurately.

Q. Did you hear any such statements during the Foster-Zietz trial?

A. As I have described.

Q. Yes.

A. Yes, I did.

Q. And did you during the Darcy trial?

(430) A. Yes, I think so—I did.

Q. I want you to state whether or not you knew Judge Boyer.

A. Yes, I knew Judge Boyer and respected him a great deal.

Q. I want you to state whether you had any conversation with Judge Boyer concerning these cases.

BY JUDGE MURPHY: Now if you will make an offer—make an offer, Mr. Margiotti, please.

BY MR. MARGIOTTI: At sidebar?

BY JUDGE MURPHY: No.

BY MR. MARGIOTTI: Well, I propose to prove by the witness that he had conversations with Judge Boyer in which Judge Boyer expressed himself against the defendant and the other boys, that he was antagonistic to them, that he showed feeling against them and said that they were hardened criminals and that he resented a conversation about them, and sought to avoid the conversation.

BY JUDGE MURPHY: We now have a dead man, Judge Boyer, and an attempt to have this witness now speak the words of the dead man, but in view of the latitude we have allowed, we will let this witness answer the question notwithstanding Judge Boyer is not here to reply..

BY MR. VAN ARTSDALEN: We object.

BY JUDGE MURPHY: You object, and we will take it.

Knickerbocker Davis—Direct

(431) BY THE WITNESS:

A. I had known Judge Boyer quite a while —

BY JUDGE MURPHY: First of all, the time?

BY THE WITNESS: The time was at some time during, I would say—during the Zietz-Foster trial, as I can remember. I can't be too accurate about that. It was during the actions that were taking place —

BY JUDGE MURPHY: During the Foster-Zietz trial—and the place?

BY THE WITNESS: I met Judge Boyer coming out of a movie one night, the County movie. As I say, I had known him a long time. I had a great respect for his ability —

BY JUDGE MURPHY: Did they have night sessions during the trial?

BY THE WITNESS: It hadn't anything to do with that. He came out of the movie. I don't know what movie. I met him on State Street. I fell in step with him just for a moment. He and I had an exchange of words—I don't like being placed in the position here, Your Honor, of seeming to slander a dead man because I liked Judge Boyer very much —

BY JUDGE MURPHY: Answer the question.

BY THE WITNESS: I am trying to recall his conversation as accurately as I can. I told him I had attended the trial with interest—that, as I remember, I told him that I

didn't think these two (432) boys that were on trial looked like the type of desperadoes that I had contacted in the journalistic work which brought me in contact with the underworld. I think Judge Boyer was irritable. I guess he thought I might be sticking up for them. As I remember, he was very sharp with me. He said, "I think they are young hardened criminals and callous criminals." I have never repeated that since until now.

BY JUDGE MURPHY: You didn't. How did Mr. Margiotti know it?

BY THE WITNESS: I told Mr. Margiotti, yes sir, but I have never spread—broadcast that by any means. I don't think there is anybody in Bucks County that can say they heard me repeat that.

BY MR. MARGIOTTI:

Q. What was Judge Boyer's reaction to the conversation—and demeanor?

A. I think he was probably annoyed at my bringing attention to the trial that was engrossing him. That is—I changed the conversation. In fact I left him shortly after.

Q. Did he show any resentment or anything like that?

A. I think he resented touching upon a subject which he was having a professional part in.

BY MR. MARGIOTTI: You may cross-examine.

CROSS-EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Davis, this conversation you say you had with Honorable Judge Boyer, did that occur during the Foster-Zietz trial, before it or after it?

A. Mr. Van Artsdalen, I wouldn't say. It was my impression that (433) it was in the midst of the trial or shortly after. I think it was before the Darcy trial, as I remember.

Q. Do you recall what day of the week it was?

A. Oh, no. It was in the evening.

Q. You attended all the sessions of the Foster-Zietz trial?

A. No sir.

Q. You did not. You say you attended one day of the Darcy trial; is that correct?

A. Yes sir.

Q. Do you recall what day that was, sir?

A. No.

Q. Was it during one of the days in which evidence was being produced?

A. I don't remember that either, Mr. Van Artsdalen. I met "Mike" Achey at the hearing. I knew him quite well. I walked into the courtroom and I sat there for a while and I didn't even see this defendant's face. I saw the back of his head.

Q. I take it, therefore, the day you spent at the Darcy trial did not impress itself on your mind?

A. I wouldn't say, no.

Q. There was nothing unusual occurred during the time you were there at the trial; was there?

A. No sir.

Q. Any demonstrations or outbursts of any sort?

A. Oh, no.

Q. Did you have any difficulty finding a seat in the courtroom on the day you went into the Darcy trial?

A. The Darcy trial—I think it was filled above normal. I think all those trials were.

Q. You think they were?

(434) A. They were. I can't estimate what is a normal court attendance up there. I don't go to court too much.

BY JUDGE MURPHY: Read Mr. Van Artsdalen's question, Mr. Reporter.

(Question of Mr. Van Artsdalen read by the Reporter as follows: "Did you have any difficulty finding a seat in the courtroom on the day you went into the Darcy trial?")

BY THE WITNESS:

A. No.

BY MR. VAN ARTSDALEN:

Q. Do you recall how long you were in there on that day, Mr. Davis?

A. Oh, one-half hour maybe; maybe an hour; I don't recall.

Q. Now when was it you first told Mr. Margiotti about this conversation you say you had with Judge Boyer?

A. I think it was last evening—it was.

Q. You mean you had never told anybody about this conversation prior to that?

A. No, sir, ~~got to my~~ recollection.

Q. Had you written anything about it?

A. Judge Boyer —

Q. No. Had you written anything about these cases?

A. For publication —

Knickerbocker Davis-Cross

Q. Yes.

A. No sir.

Q. Have you ever written to Mr. Margiotti about this case?

A. Written to him about this case.

Q. Yes.

A. No.

Q. When were you first contacted by Mr. Margiotti or anyone from his office about this case?

(435) A. I received a call—I can't remember the date; maybe I have it in a diary somewhere; it was sometime ago—from a man who said he was an investigator.

Q. About how long ago, sir?

A. I don't know. The first contact about—

Q. Yes.

A. Oh, I would say six weeks ago—maybe longer.

Q. Had you expressed yourself publicly anywhere in the papers or anywhere else as to your investigations of this case?

A. You mean for this trial—this hearing.

Q. No, not for this hearing. Had you expressed yourself anywhere publicly?

A. I think I mentioned to people I was making a survey not only of Bucks County but of various areas to do this work. I think it would be a pretty big job. I think it would have gone beyond Bucks County.

Q. What books have you written, Mr. Davis?

A. I haven't written any books.

Q. What articles have you written?

A. I wrote, as I think I stated before upwards of 100 published feature articles during the war. Everybody's Weekly in the Philadelphia Inquirer. I was on twenty-seven weeks' assignment with them. I have written for the Ladies' Home Journal, women's magazine.

- Q. How many articles for the Ladies' Home Journal?
A. I wouldn't say—probably over a period of years, four.

Q. What is your present occupation, sir?

A. I am writing a book—it is supposed to be.

Q. Are you employed by any firm?

A. No.

(436). Q. And you have been writing this book since coming to Bucks County in 1947?

A. Yes. I have started it. I had started it long before that. It is a historical novel, early American. It requires a great deal of research. We had the locale in Bucks County. I have been working very hard and I don't know when I will get it completed. Novels of that type, Mr. Van Artsdalen, take four or five years.

BY JUDGE MURPHY: What was the last thing that you wrote that was published?

BY THE WITNESS: There have been some minor articles —

BY JUDGE MURPHY: How long since anything was published?

BY THE WITNESS: I would say a month.

BY JUDGE MURPHY: Where?

BY THE WITNESS: These minor articles were published in that little magazine they are sending out in our parts, "The Bucks County Traveler."

BY JUDGE MURPHY: How about outside Bucks County?

Knickerbocker Davis-Cross

BY THE WITNESS: The last feature article I had published was in 1945 on detraining of war dogs.

(436a) BY JUDGE MURPHY: Where was that?

BY THE WITNESS: It was published in Collier's in April, 1945, entitled "The G. I. Dog Comes Home."

BY JUDGE MURPHY: What about before that?

BY THE WITNESS: Mostly the articles I write were for Everybody's Weekly.

BY JUDGE MURPHY: Before 1945 what was the last time you had something published outside of Bucks County?

BY THE WITNESS: I would have to look at my records.

BY JUDGE MURPHY: You don't have any recollection of any major work of yours. Can you recall the title of one major work of yours?

BY THE WITNESS: Published before 1945

BY JUDGE MURPHY: Yes sir—or ever.

BY THE WITNESS: Well, I wrote an article in 1938.

BY JUDGE MURPHY: What was that on?

BY THE WITNESS: That was for the County Gentleman magazine. It was (437) entitled "Pilot-Bred." It was a play on bread.

BY JUDGE MURPHY: What was that about?

Knickerbocker Davis--Cross

BY THE WITNESS: "Pilot-Bred"—the history of it was done for the Country Gentleman.

BY JUDGE MURPHY: What about before 1938—any other major work?

BY THE WITNESS: I wrote an article for the American magazine —

BY JUDGE MURPHY: The year?

BY THE WITNESS: —on fire prevention.

BY JUDGE MURPHY: What date?

BY THE WITNESS: I can't remember the dates. Fire prevention through the training of youngsters to be conscious of fire hazards.

BY JUDGE MURPHY: Anything else?

BY THE WITNESS: Do you mean major articles?

BY JUDGE MURPHY: What do you call "major"? American magazine was one —

BY THE WITNESS: (437a) I would say the articles I wrote for Everybody's Weekly were major.

BY JUDGE MURPHY: The American magazine was what year?

BY THE WITNESS: 1937.

Knickerbocker Dennis—Cross

BY JUDGE MURPHY: You said you worked for the Public Ledger. How long is that out of business?

BY THE WITNESS: I could tell you—the Public Ledger was discontinued first—it was in 1935, I think. I am not positive on this date.

BY JUDGE MURPHY: I have no other questions.

BY MR. VAN ARTSDALEN:

Q. Mr. Davis, you stated you also had some official capacity with the Society for the Prevention of Cruelty to Animals?

A. The Society for the Prevention of Cruelty to Animals —

Q. Yes.

(438) A. I have been an agent—do you wish me to tell you what my duties are, what they embrace —

BY MR. MARGIOTTI: Just answer his question.

BY MR. VAN ARTSDALEN:

Q. You were connected with the Society for the Prevention of Cruelty to Animals?

A. The Pennsylvania Society for the Prevention of Cruelty to Animals for forty years, I should say, as an agent.

Q. Are you still an agent for the Pennsylvania Society for the Prevention of Cruelty to Animals?

A. I am still an agent for the Pennsylvania Society for the Prevention of Cruelty to Animals.

Q. But weren't you also connected with the Bucks County Society for the Prevention of Cruelty to Animals?

A. I organized the Bucks County Society for the Prevention of Cruelty to Animals in 1912.

Q. And you have left that organization, is that correct?

A. Yes sir. I was its President and Field Secretary.

Q. In what year did you leave?

A. Did I leave —

Q. Yes.

A. Oh my! About three years ago, I should say.

Q. And that was as a result of a dispute in the organization?

A. It was the result of a dispute over policies.

BY JUDGE MURPHY: We will take a ten-minute recess.

(Recess.)

(Court resumes after the recess with all parties, including the Relator, David Darcy, present in Court.)

(439) MR. LEICESTER KNICKERBOCKER DAVIS, recalled.

CROSS-EXAMINATION (Continued).

BY MR. VAN ARTSDALEN:

Q. These persons that you spoke to about the case after the shooting, between what period of time did that take place?

A. I would say my interest was aroused almost immediately.

Q. Almost immediately. And for how long a period of

Knickerbocker Davis—Cross

time—in other words, over how long a period of time then did you contact 100 or 150 people?

A. I would say up to the termination of the Dairley trial.

Q. You mean throughout that whole period?

A. Yes.

Q. Now I believe you stated you think it was during the Foster-Zietz trial you talked to Judge Boyer, is that correct?

A. I think it was.

Q. You talked to him, directly addressed him?

A. I expressed my interest in it. I said I had been up there and I unwisely made mention about the appearance of these two youths.

Q. I believe you said Judge Boyer resented any conversation about the case?

A. Well, he was pretty sharp.

Q. Did you consider at that time whether or not it was proper to speak to a judge about a case that was on trial?

A. No, I didn't. I didn't know about the legal ethics of such matters. I had known Judge Boyer over a good many years from the time he was District Attorney. I knew him as a member of the Historical Society. I knew Mrs. Boyer. I liked them both very much.

(440) Q. Where did you live before coming to Doylestown in 1947?

A. At Chestnut Hill. Before that I lived in Germantown in an apartment.

Q. And when did you first become acquainted with Judge Boyer?

A. He was District Attorney at that time, and as an agent of the Society for the Prevention of Cruelty to Animals I had arrested and prosecuted a person for an act of cruelty who appealed the verdict before the magistrate and took it to the courts in Doylestown, and I drove up and met District Attorney Boyer at that time. He was very cooperative.

Q. Were you a resident of Bucks County at that time?

A. Oh yes. I lived in Bucks County from 1907 until 1925.

Q. And you were familiar with court procedures prior to the Foster-Zietz trial, were you not?

A. As a layman, yes, roughly.

Q. Well now, between—I take it you first knew Judge Boyer sometime while he was District Attorney?

A. Yes sir.

Q. And around what year was that?

A. I don't know. It may have been around the year 1916. Now I am not positive on that at all.

Q. What I am trying to arrive at is were you particularly friendly with Judge Boyer from 1925, or whenever it may have been when you left Bucks County, up until the time that you returned to Bucks County in 1947?

A. You mean in the interim when I was away from Bucks County —

Q. Yes.

A. I never saw him in that period.

Q. All right. Well then, as a judge you had no contact with Judge Boyer up until at least December 13, 1947, when you moved back (441) to Bucks County, is that correct?

A. The first contact I can't place the date. You may be able to place the date from this: I met Judge Boyer and Mrs. Boyer at a meeting of the Bucks County Historical Society, and it may place the date because he mentioned the forthcoming trial of Foster-Zietz at that time and he told me they were asking for a severance, as I remember—whatever that is.

Q. You didn't come in contact with him as Judge until you came back up to Bucks County in 1947?

A. No.

BY MR. VAN ARTSDALEN: All right; that is all.

Knickerbocker Davis—Re-direct

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Do you have any of those articles that you have written?

A. Yes sir.

Q. Let me see them.

A. These were picked at random. There are none of the newspaper feature articles there because they are all stored away.

Q. Let's take —

A. This was an article for People and Places having to do with police radio calls. That is a picture story; very little there is to it. I have a journalist's rating as a photographer. I have just a few pages there.

Q. This article is entitled "Calling All Cars"?

A. Yes sir. These were taken —

Q. Go back on the stand, please.

A. These were taken with the cooperation —

Q. Don't answer that. This was your article?

A. That is my picture story.

(442) Q. This is your picture story.

BY MR. MARGIOTTI: We offer it in evidence.

BY JUDGE MURPHY: The legal purpose is what?

BY MR. MARGIOTTI: To substantiate the witness when he says he wrote articles for magazines since he has been questioned and interrogated on that subject by Your Honor and also by the District Attorney.

BY MR. VAN ARTSDALEN: I object..

BY JUDGE MURPHY: The objection is sustained if that is the only purpose.

BY MR. MARGIOTTI: And for the purpose of showing his occupation and throwing light on his background.

BY JUDGE MURPHY: The objection is sustained if it is for that purpose, the fact he wrote a magazine article "Calling All Cars"—somebody took the pictures —

BY THE WITNESS: I took the pictures.

BY JUDGE MURPHY: You took the pictures?

BY THE WITNESS: Yes.

BY JUDGE MURPHY: "Calling All Cars!—What Happens When You Call A Cop" (443) In Philadelphia." We sustain the objection. We don't see how it can add any help, good, bad or indifferent, to this case.

BY THE WITNESS: That is a picture story illustrating a story, my photography. I was sent on an assignment to take that.

BY JUDGE MURPHY: The issue in question is "People And Places" and it is dated November 1, 1940. So that fourteen years ago, he wrote this article which consists of six paragraphs.

(People And Places Magazine marked "Relator's Exhibit No. 125"; Country Gentleman Magazine marked "Relator's Exhibit No. 126")

BY MR. MARGIOTTI:

Knickerbocker Davis—Re-direct

Q. Will you state whether or not you wrote this story in the Country Gentleman?

A. That is a picture story. The article I did not write the text.

Q. You merely took the pictures?

A. I was sent out. It was an assignment to take the pictures.

Q. But you didn't write the article?

A. No sir.

Q. Is there any article in that magazine you are holding?

A. Yes sir.

Q. Let me see it.

A. I will testify to it.

BY MR. MARGIOTTI: Your Honor, I had marked "No. 126" which I would like to withdraw because it is simply a picture story and it isn't a written article.

BY THE WITNESS: This is an article carrying a dual by-line with my (444) wife, who is an accredited war correspondent. The pictures were taken under my direction by Ifor Thomas. I wrote it and my wife was given a by-line on it with me. That was April, 1945.

(Collier's Magazine marked "Relator's Exhibit No. 127")

BY MR. MARGIOTTI: At this time I offer in evidence "Relator's Exhibit No. 127", being Collier's Magazine of April 14, 1945, containing an article "The G. I. Dog Comes Home", by Grace and Knickerbocker Davis. I would like to show this to the Court.

BY MR. VAN ARTSDALEN: That is objected to.

BY JUDGE MURPHY: The item in question consists of

four paragraphs on one page together with a substantial part of two pages pictures of dogs and men and human beings with them. The objection is sustained. We don't see that it can add anything in this proceeding.

BY MR. MARGIOTTI: I think it throws some light upon the truthfulness of the witness in writing articles.

BY JUDGE MURPHY: There is no doubt about it. He apparently wrote articles about seeing-eye dogs and police calls. The question here is what happened at Bucks County at this time.

BY THE WITNESS: This is a short article about the Army newspaper.

BY MR. MARGIOTTI:

Q: Who is that by?

A: This was a picture story by me, the same as that in Collier's.

(445) (Collier's Magazine marked "Relator's Exhibit No. 128".)

BY MR. MARGIOTTI: Page 40, Collier's of September 13, 1941, an article entitled "Our New Army".

BY MR. VAN ARTSDALEN: I object to that.

BY MR. MARGIOTTI: Page 40, Judge.

BY JUDGE MURPHY: The article in question is headed "Our New Army". There is a heading "New Jersey", "Massachusetts", "New Hampshire", "Maryland", "Virginia", "North Carolina", "Georgia", and it ends up in

Knickerbocker Davis—Re-direct

"Recoil". We apologize for that fernictant report. Every thing's resartus. Comma?"

The objection is sustained.

BY MR. MARGIOTTI:

Q. Do you have with you any letters showing any other employment?

A. Yes sir.

Q. Let me see them.

A. This is an article that was written on Bucks County in Bucks County.

Q. Point to it.

(Commonwealth Magazine marked "Relator's Exhibit No. 129".)

BY MR. MARGIOTTI: We offer in evidence "Commonwealth, The Magazine For Pennsylvania", "Relator's Exhibit No. 129", the article on Bucks County, the witness being the author of the article. The date is Winter of 1950.

MR. VAN ARTSDALEN: That is objected to.

(446) BY JUDGE MURPHY: At least this article is about Bucks County and it may possibly add some light. We will receive it in evidence. It is about the county where this affair occurred. We will take it.

BY MR. MARGIOTTI: All right.

Q. Now, Mr. Davis, were you at any time connected with the Fourth Naval District of Pennsylvania—of the United States at Philadelphia?

A. I was brought into the Temporary Reserve of the Coast Guard as a Lieutenant Senior Grade.

Q. When was that?

A. In 1945.

Q. O. K.

BY JUDGE MURPHY: Were you on the payroll?

BY THE WITNESS: No sir; I served without pay.

BY MR. MARGIOTTI:

Q. Will you state —

BY JUDGE MURPHY: Now there is some evidence of that here. But if there is any question about it, I would offer it.

BY MR. MARGIOTTI: I have some evidence, that is correct. There is some evidence. If there is any controversy about it, I will offer the evidence.

BY JUDGE MURPHY: Sir, we will pass on the record as made in this Court.

BY MR. MARGIOTTI: (447) All right.

BY JUDGE MURPHY: Are there any more witnesses to be called today?

BY MR. MARGIOTTI: Yes.

BY JUDGE MURPHY: We will only go to 4:30 and we would like to go on to 4:30 if there are other witnesses. We have got to get finished at some time or other.

BY MR. MARGIOTTI: I am sure we will be through at

Knickerbocker Davis—Re direct

noon, which is a little faster than I anticipated this morning.

(Letter of United States Coast Guard marked "Relator's Exhibit No. 130"; Letter of Fourth Naval District marked "Relator's Exhibit No. 131".)

BY MR. MARGIOTTI: We offer in evidence "Relator's Exhibit No. 130" and "Relator's Exhibit No. 131", showing the witness' connection with the United States Coast Guard as a Lieutenant and his connection with the Fourth Naval District, Philadelphia.

BY MR. VAN ARTSDALEN: The offer is objected to.

BY JUDGE MURPHY: Well, this letter is dated July 25, 1944, and it is written to Mr. and Mrs. Knickerbocker Davis:

"Dear Mr. and Mrs. Davis:

"This office has been advised that you have been fully cleared by investigation of Personnel Security Questionnaires and are now eligible for future authorizations to visit Naval establishments, upon specific request."

And it is signed by the District Public Relations Officer.

(449) Another letter is dated March 10, 1945. It is addressed to Lieutenant (T) Knickerbocker Davis, USCGR.

"Subj: Assignment to active duty; designation as Coast Guard Public Relations Liaison Officer, 4th ND.

"1. Having been appointed a Lieutenant (T) in the Coast Guard Reserve, you are hereby designated as Coast Guard Public Relations Liaison Officer, 4th ND, officiating as such without pay.

"2. As Public Relations Liaison Officer you will be expected to give such time as you can spare from your private affairs to the maintaining of satisfactory working relations

between the Coast Guard Public Relations office of this District and those of the Army, Navy and Marine Corps, together with public broadcasting stations, publications of general circulation, promotional agencies, and the press.

"3. Such feature articles, or other material, as you may prepare for publication as a member of the ~~Temporary~~ Reserve and for which you may receive no remuneration, and any suggestions you may have for broadcasts, magazine articles, press releases, etc., are to be submitted to the DCGQ 4th ND before promulgation.

"(Signed) Captain, USCG."

So that they are in the record for whatever light they add.

BY MR. MARGIOTTI:

Q. Will you state whether or not you held any other position, (449) any other public position, in Bucks County?

A. Public position —

Q. Yes.

A. Mr. Van Artsdalen mentioned the Bucks County Society for the Prevention of Cruelty to Animals. Is that a public position?

Q. I have in mind more particularly the position of Coordinator in the Civil Defense.

A. I was appointed by Judge Hiram Keller—I imagine that is the appointment you hold there—as Executive Officer for the County Civil Defense Council.

Q. When were you so appointed?

A. The date is on the appointment, sir.

Q. All right.

A. 4 August, 1950.

(Letter of Judge Hiram Keller marked "Relator's Exhibit No. 132".)

Knickerbocker Davis - Ré-direct

BY MR. MARGIOTTI: We offer in evidence a letter —

Q. Whose signature is this on the letter; is that Judge Keller's signature?

A. Yes, sir.

BY MR. MARGIOTTI: —a letter marked "Relator's Exhibit No. 132" in which the witness is appointed Defense Coordinator for Bucks County.

BY THE WITNESS: Executive.

BY MR. MARGIOTTI: Executive Defense Coordinator with the County Defense Council by Judge Keller.

BY MR. VAN ARTSDALEN: (450) That is objected to.

BY JUDGE MURPHY: We will take it for whatever light it can add on this question.

BY MR. MARGIOTTI:

Q. When did you first meet me?

A. Meet you, Mr. Margiotti —

Q. Yes.

A. It was a very short time ago. I am trying to recall it.

Q. Was it during this hearing?

A. Yes sir.

Q. And do you know how the Relator in this case or his attorneys got word concerning you or became acquainted with you, got to know about you?

A. No sir, other than I received a call from an investigator, I don't know who, that he said he was an investigator for the Charters Company; I don't remember the name.

Q. From where?

Knickerbocker Davis—Re direct

A. I think the investigator is present in the courtroom here.

Q. Is he here?

A. I don't remember the spelling.

BY JUDGE MURPHY: He said to you what company as best you recall it?

BY THE WITNESS: He told me he was an investigator of this company that I remember he called the Charters Co. He is standing back there by the window.

BY MR. MARGIOTTI:

Q. Did he tell you how he got your name?

BY MR. VAN ARTSDALEN: (451) I object.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTI: They have thrown a lot of implications on the part of the Relator's side —

BY JUDGE MURPHY: It is all right. The man has stood up in Court and has been identified. What you are doing is trying to get hearsay in without subject to cross-examination.

BY MR. MARGIOTTI: So far as that gentleman is concerned, he is going to appear as a witness.

BY JUDGE MURPHY: The objection is sustained. The man is here; the man is available.

BY MR. MARGIOTTI:

Knickerbocker Davis - Re-direct

Q. Were you subpoenaed thereafter?

A. Yes, sometime after that.

Q. Sometime after that. And last evening was the first time you told the story to me?

A. Yes sir.

Q. And that was at the Casey Hotel, was it?

A. Yes sir.

Q. In these various stories that you heard up to and including the Darcy trial, did you hear any references that applied to the location where the defendants came from?

A. I did - I quite don't understand your question —

Q. Did you hear anything said concerning the fact that they were from out of Bucks County?

(452) Yes, I did.

Q. What did you hear?

A. Well, that "The criminals can not come into Bucks County and commit crimes."

Q. Is that all you heard?

A. Well, "They would be pretty sharply dealt with" was the implication I did hear. I can't remember exactly what I heard —

BY MR. VAN ARTSDALEN: I object, not responsive.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTI:

Q. I want what was said; I don't want a conclusion on your part; the substance of what was said about people that came into Bucks County and committed crimes.

A. I can't remember.

BY MR. MARGIOTTI: That is all.

Knickerbocker Davis - Re-cross

RE-CROSS EXAMINATION

BY MR. VAN ARTSDALEN:

Q. Mr. Davis, you are no longer connected with Civil Defense in Bucks County, are you?

A. No sir, I have my accepted resignation with those other papers from Judge Keller.

Q. When did you resign?

A. It is on the date of the acceptance of the resignation that Mr. Margiotti has.

Q. Can you recall when it was?

A. Oh my, I don't know how long I was in there. Can I present that acceptance of the resignation by Judge Keller? You are (453) asking me some pretty nebulous questions.

BY JUDGE MURPHY: The witness has asked to use a paper to refresh his recollection.

BY MR. VAN ARTSDALEN: I have no objection to that if it is available.

BY THE WITNESS: It was acknowledged on the 7th resignation sent on the 6th, 1950.

BY MR. VAN ARTSDALEN:

Q. The 6th of what?

A. November 6th.

Q. You accepted the job on August 1, 1950?

BY MR. MARGIOTTI: That is already in the record.

BY THE WITNESS:

Knickerbocker Daris—Re-direct

A. I am trying to find out the date of the letter in which I got my appointment.

BY MR. VAN ARTSDALEN:

Q. I think you testified on direct examination it was on August 1, 1950, you were so appointed?

A. I imagine so, yes.

Q. It was a period of about three or four months then that you were connected with the Bucks County Civil Defense?

A. If that is it, yes.

Q. Was your resignation due to a dispute as to policy?

A. No sir. I will modify that. There was no active dispute. Colonel Heritage —

Q. There was a difference of opinion, is that right?

A. Yes sir.

BY MR. VAN ARTSDALEN: That is all.

(454) RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Will you state whether or not that letter in which the resignation was accepted states the nature of the controversy?

A. No sir. Here it is.

Q. Is that a letter signed by Judge Keller?

BY JUDGE MURPHY: You are going into the contents. Wouldn't it be a good idea to mark it "Relator's Exhibit No. 133 —

BY MR. MARGIOTTI: That is just exactly what I am doing.

BY JUDGE MURPHY: — if it adds any light at all?

(Letter of Judge Keller marked "Relator's Exhibit No 133.")

BY MR. MARGIOTTI: If the Court please, we offer in evidence "Relator's Exhibit No. 133," being the acceptance of the resignation.

BY JUDGE MURPHY: It will be received for whatever light it might possibly throw.

(Letter of Civil Defense Council marked "Relator's Exhibit No. 134.")

BY MR. MARGIOTTI: What was the date of that, Judge?

Q. On October 8, 1951 will you state whether you were given an appointment by the Executive Officer of the Borough of New Hope?

(455) A. Yes sir.

Q. And how long—did you take that appoint?

A. It was understood it was for a very short term to help them with public information, and they appointed me as Public Information Officer of this.

Q. How long did you keep that?

A. About a month. It was to execute some specific pieces of work.

BY MR. MARGIOTTI: We offer in evidence "Relator's Exhibit No. 134" for whatever it is worth.

Knickerbocker Davis—Redirect

BY JUDGE MURPHY: For whatever it is worth, we will take it.

BY MR. MARGIOTTI: We offer in evidence "Realtor's Exhibit No. 134" for whatever it is worth.

BY JUDGE MURPHY: For whatever it is worth, we will take it.

BY MR. MARGIOTTI: That is one time we definitely agree.

BY JUDGE MURPHY: "Relator's Exhibit No. 134" shows:

"Pursuant to provisions of the State Council of Civil Defense Act of 1951, and pertinent orders of the Bucks County Defense Council, you are hereby appointed Public Information Officer.

"We are enclosing your identification form, No. 20057.
"8 October 1951."

BY MR. MARGIOTTI: That is all.

BY MR. VAN ARTSDALEN: That is all.

BY MR. MARGIOTTI: That is all. You are excused.

(Witness excused.)

MISS MARION R. FORD, called and sworn on behalf of the Relator, on direct and cross-examination, testified as follows:

DIRECT EXAMINATION

BY MR. MARGIOTTI:

Q. Miss Ford, where do you reside?

A. Philadelphia.

Q. How long have you lived there?

A. For the past twenty-five years.

Q. Are you related to Darcy, the Relator, in this case?

A. I am.

Q. How are you related to him?

A. I am his maternal aunt.

Q. Maternal aunt. Do you know who had charge of this case as far as contacts concerned during the trial?

A. Do I understand—have I been —

Q. No. Do you know who did have charge?

A. Who had charge—the father of David Darcy, Joseph Darcy.

Q. Do you know where the father is now?

A. The father is presently confined to an institution. He had a mental collapse as a result of the tragedy.

Q. How long has he been in a mental institution?

A. For the past three years.

Q. What was his father doing at the time of the Feasterville killing?

A. His father served as a tipstaff in the Philadelphia courts.

Q. What was that?

A. His father served as a tipstaff in the Philadelphia courts.

Miss Marion R. Ford—Direct

Q. And did he have—do you know what judge he was working for?

A. He was in Common Pleas Court No. 6, Judges Bok, Flood—and I am sorry, I have forgotten the name of the third judge.

(456) BY JUDGE MURPHY: Judge Goldstein.—Judge Leventhal —

BY THE WITNESS: Judge Leventhal; that is correct.

BY MR. MARGIOTTI:

Q. He was tipstaff in Courtroom No. 6?

A. That is right.

Q. Then your father took charge of the case when the boy was arrested?

A. That is right; the father did.

Q. Have you taken an interest in the boy's case?

A. Yes, I have.

Q. And particularly when did your interest begin?

A. Well, my interest began from the very beginning of the tragedy naturally, but the father was in charge. I helped him in any way I could and then finally after the father's health—after he was no longer able to carry on, I more or less became the directing head.

Q. That is when the father got ill and went into the institution?

A. When he was no longer able to carry on.

Q. You carried on for the family?

A. I did.

Q. How many are there in the Darcy family?

A. Altogether there are six children, three boys and three girls.

Q. Is his mother living?

A. His mother is living.

Q. Are any of the boys here?

A. One brother is here in the courtroom. The other brother is in the United States Air Force out of the country.

Q. What about the sisters?

(457) A. There is one sister here presently. There is another sister who is here in town and isn't feeling well today. A third sister who just recently gave birth to a baby and is unable to be here.

Q. What is your occupation?

A. I am a licensed real estate broker and insurance broker.

Q. And how long have you been such?

A. I have been a licensed insurance broker for the past—oh, better than ten years, I would say. My broker's—real estate broker's license, I have been licensed for the past four years.

Q. And during the time of the—from the time of the Feasterville killing up to the present time you have been in this occupation?

A. I beg your pardon!

Q. This has been your occupation from the date of the killing at Feasterville?

A. That is right.

Q. Have you as an aunt employed counsel for Mr. Darcy?

A. I have never directly employed counsel. More or less through a friend who—well really the first time any action was taken you might say indirectly by myself was when a friend got in touch with you and through the circumstances who had no knowledge of the case —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: Yes. We have been far afield. We will not stop it. I hope we will not go that far.

BY THE WITNESS: Shall I continue it?

BY MR. MARGIOTTI:

Q. You say some friend got in touch with me?

A. That is right.

Q. You followed that up —

BY JUDGE MURPHY: How could this possibly be material in habeas corpus?

BY MR. MARGIOTTI: Simply to show their interest. If they can bring it out, I have a right to bring it out before they bring it out.

BY THE WITNESS: The friend is here in Court.

BY JUDGE MURPHY: You are the lawyer and you have been for sometime and this Court knows it. You have been before us a year or two ago in this case and you are engaged.

BY MR. MARGIOTTI:

Q. Miss Ford, did you attend the trial, the Darcy trial?

A. I didn't attend every session. I would say I missed perhaps four or five sessions, three of which were during the selection of the jurors.

Q. That is the ones that you missed?

A. The ones that I missed.

Q. And then were you there during the taking of the testimony, with the exception of one session?

A. No, I think I missed more than one session during the taking of the testimony. I imagine more than one.

Miss Marion R. Ford - Direct

BY JUDGE MURPHY: It is now 4:32. We will recess—
we will adjourn until 10:00 o'clock, tomorrow morning.

(Court adjourns for the day.)

(459) (Court resumes on Wednesday, March 17, 1954 at
10:05 with all parties, including the Relator, David Darcy,
present in Court.)

BY MR. MARGIOTTI: If the Court please, the Commonwealth has caused to be prepared on scale a map of the courtroom in question—I can't give the scale because it isn't on the map—a map of the courtroom which we have agreed to introduce in evidence as "Relator's Exhibit No. 135," which shows the permanent fixtures, and we are agreeing that this is the situation as it existed at the time of the Darcy trial with the exception of the movable objects such as tables and chairs but not the chairs occupied by the jurors and not the bench.

BY JUDGE MURPHY: It will be received.

(Diagram of Courtroom marked "Relator's Exhibit No. 135.")

BY MR. MARGIOTTI: The only reason we are doing it at this time is that this witness may refer to it.

MISS MARION R. FORD, recalled.

DIRECT EXAMINATION (continued)

BY MR. MARGIOTTI

Q. Now, Miss Ford, I believe you stated that you attended the Darcy trial, is that right?

A. Yes; I did attend the Darcy trial, not every session. I missed about four or possibly five sessions, three sessions of which were during the choosing of the jury.

Q. I see. Will you state whether or not you attended any night session?

A. I attended the only night session there was. That was a Friday night.

Q. Will you state whether or not you observed Judge Boyer in the (460) courtroom?

A. I did.

Q. On how many occasions?

A. Every session that I attended I saw Judge Boyer in the courtroom.

Q. And will you state when you saw him where was he?

A. He sat on the bench on all but two occasions.

Q. On what?

A. He was sitting on the bench on every session with the exception of two which I attended.

Q. And when he sat on the bench who else sat on the bench?

A. Judge Keller.

Q. Will you state whether or not at that time the trial was going on?

A. The trial was going on.

Q. Will you state whether or not you observed what, if anything, Judge Boyer did on the bench?

A. There was collaboration between the two judges much discussion between them; and if my memory serves me correctly, I recall Judge Boyer directing questions to the attorney or some discussion with the attorney.

Q. Which attorney?

A. Mr. Achey.

Q. Now on the two occasions when he wasn't on the bench where did you see him?

A. On the two occasions when he wasn't on the bench he was sitting in the chairs reserved for the members of the bar around the semicircle.

Q. Now assuming that His Honor Judge Murphy is sitting where the judge sat —

A. Judge Boyer when he was —

(461) Q. —would it be to the Judge's right or left?

A. It would be to the Judge's right opposite the jury. The jury would be on the Judge's left and Judge Boyer would be sitting on the Judge's right.

Q. Now will you tell me what position you occupied in that courtroom?

A. I was sitting on the benches for spectators to the right of the Judge.

Q. Well, where were these benches?

A. You would enter the courthouse from the rear; as you open the door the first thing at the far end of the courtroom, the bench. There was a platform all around the entrance of the courtroom. There were—there was an amphitheater and there was—you would go downstairs. In other words, your level would go lower all the time. We would come in, turn to our left and go over and down the side aisle. We would always sit in either the first or second row. As a matter of fact, some members of the family would be in the first row all the way over and some were in the second row. Myself I sat in the second row.

Miss Marion R. Ford. Direct

Q. I want you to look at "Relator's Exhibit No. 135." I want you to state whether or not you could designate for the benefit of the Court here the place that you occupied. First, do you understand the map?

A. Yes, I do. Here's the judges' bench, the jury, prosecution table, defense table. There should be another table in here. This I presume is the reporters' table.

Q. You speak for yourself.

A. All right. We sat either the first or second rows; the benches here, the first and second row. These are the chairs reserved for the members of the press. On the particular occasions of (462) which I spoke Judge Boyer was seated about here, this chair here.

Q. Now did you at any time observe —

BY JUDGE MURPHY: For the record "about here" doesn't mean anything to the Appellate Court.

BY MR. MARGIOTTI: I am going to have her mark the exact place after I ask her the next question or two.

Q. Did you at any time observe anything unusual with reference to Judge Boyer?

A. Yes, I did.

Q. Now will you turn to the Court and tell the Court what you observed?

A. It was the last session of the trial —

Q. Toward the Reporter —

A. It was the last session of the trial. Judge Keller was making his charge to the jury. Judge Boyer was not on the bench at the time but in this chair that I pointed out to you. Sitting next to him and to Judge Boyer's right was Mr. Biester, the District Attorney. Mr. Biester at this particular time was sitting in a very relaxed position, his legs

were outstretched, his elbows were resting on the arms of the chair. I am very intently watching and listening to Judge Keller who is making his charge to the jury. Judge Keller is about to conclude, he stops his charge and he turns and he looks in the direction of the prosecution table and the defense table and he said, "Have I forgotten anything? Have I overlooked anything?" Mr. Achey, who was sitting at the defense table at the time—(463) now I am putting this in my own words; I am not quoting verbatim—Mr. Achey answered—said, "No, Your Honor; so far as the defense is concerned." There was no answer from the prosecution. Mr. Biester at this particular time was sitting away from the prosecution table and was over at the opposite end of the courtroom. There was absolutely no answer at all. Judge Keller proceeded to make his closing remarks. He is finished, so far as the charge is concerned. He is making his closing remarks to the jury when suddenly my attention is attracted by seeing Mr. Biester sit upright in his chair, put his hand out and accept the note, a piece of note paper, hold it up, read it, jump to his feet and make his steps all the way over to the bench where Judge Keller was making his closing remarks to the jury. He stood there until he attracted Judge's Keller's attention. After a while he succeeded in attracting Judge Keller's attention. And he—again I am not quoting verbatim—he said, "Your Honor," Mr. Biester addressing Judge Keller—"Your Honor, I believe you inadvertently did thus and so." Now it was some legal point and I would hesitate to repeat what the point was, but the words he said created the impression "You said something should be second degree when you should have said first degree," something more or less along those lines. Judge Keller was quite annoyed. He said—I am not quoting verbatim—"I think I covered that point very clearly and that I didn't make any such error, but in

Miss Marion R. Ford—Direct

case I did, then for the record I should like to say thus and so." There was quite some discussion at the time. The Judge made this correction that Mr. Biester spoke of, and that was all there was to it. That was the end.

(44) Q. Now on "Exhibit No. 135" would you please take this pen with green ink and write the word "Boyer" where he was seated when you saw the note passed?

BY JUDGE MURPHY: If you are writing on the exhibit you will please write "Judge Boyer."

BY THE WITNESS: Should I refer to Mr. Biester?

BY MR. MARGIOTTI:

Q. You do what the Court tells you.

(Witness marks the exhibit.)

BY MR. VAN ARTSDALEN: I object to this exhibit being marked by the witness simply because the witnesses will have indicated a seat.

BY JUDGE MURPHY: What it is doing—it is putting her mark on the exhibit; it is spelling out the mark to other witnesses.

Do you object?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: Do you have another copy?

BY MR. MARGIOTTI: She has written in there "Judge Boyer."

Miss Marion R. Ford—Direct

BY MR. VAN ARTSDALEN: We will object to any further markings.

BY JUDGE MURPHY: Well, you can't continue. Do you have other copies of it?

BY MR. VAN ARTSDALEN: This is the only one we have here. There may be another (465) one brought up here this afternoon.

BY JUDGE MURPHY: Here's a case of a witness going on the stand and then taking a Commonwealth's exhibit which has been offered by the Relator and then marking it and it will presumably be followed by other witnesses who will have the markings immediately before them. It is an indirect, ingenuous way of leading the subsequent witness and should not occur. However, Judge Boyer's name is on there, one of the chairs. The witness can designate for the record—point out to the Court and counsel if counsel for the Relator feels it is relevant and pertinent and helpful—point out the place and we will see that it is marked later on in the trial.

BY MR. MARGIOTTI: May she use numbers in place of names?

BY JUDGE MURPHY: No, you will not mark that any further. You will describe for the record and we will see it is protected so far as the identification is concerned.

BY MR. MARGIOTTI:

Q. You have described the location of the chair, I believe, Judge Boyer was occupying?

Miss Marion R. Ford—Direct.

A. Yes sir, that is right.

Q. Where was the chair that Mr. Biester, the District Attorney, was occupying?

A. Immediately next to him.

Q. Mr. Biester was occupying the chair in front of the second section coming from the left —

BY JUDGE MURPHY: It is quite obvious here that Judge Boyer occupied the (466) first chair in the second section from the left.

BY MR. MARGIOTTI:

Q. Where were you seated?

(Witness indicates.)

BY JUDGE MURPHY: The witness was sitting a bit to the right of the center of the first row of the second section to the left.

BY MR. MARGIOTTI: And approximately behind the third chair.

BY JUDGE MURPHY: She is not pointing behind. If she means —

BY THE WITNESS:

A. I believe here.

BY JUDGE MURPHY: Behind the fourth or fifth chair, second row—right?

BY THE WITNESS: Yes sir.

BY MR. MARGIOTTI:

Q. Which row were you in?

A. The second row.

Q. And when Mr. Biester walked up to the bench where did he walk to?

(Witness indicates.)

BY JUDGE MURPHY: The witness designates that Mr. Biester walked over past and around the jury and up in the center of the courtroom to the bench where the Judge was sitting.

BY MR. MARGIOTTI: That is not the jury; that is the reporters' table.

BY JUDGE MURPHY: He walked over past the reporters' table and up to the (467) bench where the Judge was sitting in the center of the courtroom.

BY MR. MARGIOTTI:

Q. And did—will you state whether or not

BY JUDGE MURPHY: Are you through marking?

BY MR. MARGIOTTI: As far as I can go under the ruling of the Court —

BY JUDGE MURPHY: The Court will not restrict you in spelling out your case. Don't mark the exhibit. That is what I say.

BY MR. MARGIOTTI: You asked me—"Are you through"

marking?" As far as I can go under the ruling of the Court; I am.

Q. At the time that Mr. Biester spoke to the Judge where was he with reference to this front bench?

A. In the center.

Q. In the center. And if we were—will you state whether or not the bench occupied by the Court and the bench in front of the Court was somewhat similar to the bench in this courtroom?

A. A somewhat similar arrangement.

Q. Then Mr. Biester would stand where?

A. In the center.

Q. In the outside center?

A. That is right.

Q. Now then, do you know what Mr. Biester did with the note?

A. That I don't. You see, all the time he was standing at the bench his back was toward me. That I couldn't answer.

Q. And where did the note come from—from Boyer?

A. The note was handed to Mr. Biester by Judge Boyer.

(468) Q. Now you said you saw Judge Boyer off the bench on another occasion I believe you stated?

A. Yes, I did.

Q. Will you state when that was?

A. That was at the only night session—Friday night.

Q. And what was he doing then?

A. He was sitting in the very same seat opposite the jury and well—just apparently listening to the trial the same as we were doing.

Q. Do you know how long he was in the courtroom at the time the note was passed that you talked about—about how long?

A. Well, if my memory serves me correctly, Judge Keller

started his charge to the jury—I can recall you said dock entries the other day; I think you said at 1:30.

Q. I want to know about how long?

A. About one hour.

Q. About one hour? Will you state how long he was there the second time you spoke of?

A. Wait a minute! You are saying the first day.

Q. When the note was passed, how long was he there?

A. One hour.

Q. On the second occasion how long was he there?

A. The note was passed.

Q. I am not talking about when the note was passed. I am talking about the second time you saw him in the courtroom.

BY JUDGE MURPHY: Friday night.

BY MR. MARGIOTTI:

Q. Friday night.

A. For the whole session, as far as I know. I remember seeing him for most of the session anyway.

Q. Do you know how long the session was?

(469) A. Oh, two to two and one-half hours.

Q. Now do you recall whether at that time when the Judge was seated in the courtroom how he was attired on the two occasions?

A. In street clothes.

Q. And when he sat on the bench on the occasions you have mentioned do you recall how he was attired?

A. Well, I believe street clothes. I don't recall their wearing robes.

Q. On that second occasion do you know who sat with him or near him?

Miss Marion R. Ford—Cross.

A. The Friday night session —

Q. Yes.

A. Mr. Biester.

Q. And when he sat on the bench do you know how long he sat on the bench during the Darcy trial?

A. For various lengths. His stays on the bench would

Q. Vary from what to what?

A. Well, I think there might have been times he stayed for a full session; other times a very short stay; and I believe on more than one occasion he would make more than one appearance at a particular session.

Q. And when he made his appearance on the bench where did he come from — how did he enter the courtroom?

A. The door to the Judge's right at the corner. I couldn't see very well from my position. I could just see him make an entry, that's all.

BY MR. MARGIOTTI. That is all.

CROSS-EXAMINATION.

BY MR. VAN ARTSDALEN.

Q. Miss Ford, I take it that you are not married, is that correct?

476 A. That is correct, Mr. Artsdale.

Q. What is your address in Philadelphia?

A. My home address —

Q. Yes sir.

A. 1810 Rittenhouse Street.

Q. Where is your business office?

A. My business office is in the Robinson Building, 15th and Chestnut, 42 South 15th Street.

Q. I believe you stated you were an insurance and real estate broker?

A. That is correct.

Q. Are you associated with anyone else in that business?

A. No.

Q. You run your business yourself, is that correct?

A. That is correct.

Q. And does that agency have any particular name?

A. M. R. Ford.

Q. Now, as I understand it, you had nothing to do with the employment of the original counsel for David Darcy, is that correct?

Q. Do you know who did employ counsel for David Darcy?

A. His father.

Q. That counsel was Thomas McBride?

A. Webster Achey.

Q. Do you know whether Mr. McBride was employed?

A. Mr. McBride was employed to help prepare the appeal in the Pennsylvania Supreme Court.

Q. You mean he was not employed prior to that?

(471) A. No. He might have been consulted but not employed.

Q. Do you know who selected Mr. Achey?

A. Mr. Achey was selected upon the recommendation of two co-workers of Mr. Darcy.

Q. Who were they, please?

A. Clarence Water and a man they call "Gus" Thompson; I don't know whether it is August or what his given name would be, but they call him "Gus," who, by the way, were personal friends of Mr. Achey.

Q. Mr. Darcy's father was a tipstaff in the Court of Common Pleas No. 6 in Philadelphia; is that correct?

A. Yes sir.

Miss Marion R. Ford—Cross

Q. That is Judge Bok's court?

A. That is right.

Q. Is he the President Judge?

A. Judge Bok is not President Judge.

Q. So that at the time of the trial you were in no way directly interested in the case, is that correct, except as a relative?

A. Naturally, I was interested.

Q. As a relative?

A. As a relative; and I did try to help them out financially.

Q. You contributed financially originally?

A. That is right, yes.

Q. Now you stated, I believe, that Mr. Margiotti was originally employed through a mutual friend—or through a friend; is that right?

A. You see, I had been a friend of Mr. Margiotti and his family for a number of years and at one particular time a friend of ours—when things were very dark a friend of mine phoned Mr. Margiotti's home quite late in the evening and told him about (472) it. That was the first time.

Q. Would you care to tell us who that friend is, Miss Ford?

A. Margaret Gordon.

Q. Where does she live, please?

A. Philadelphia.

Q. Do you know her address?

A. I believe it is 5025 Frankfort Avenue.

Q. What is her employment?

A. Real estate.

Q. When did you come to Doylestown, Miss Ford, for this trial?

A. My first appearance.

Q. Yes m'am.

A. Tuesday afternoon. That would be June 8, I believe.

Q. And why did you come to town at that particular time?

A. For the trial.

Q. Had you been informed the jury had been selected?

A. Well, the jury hadn't been selected in its entirety at that time. There were still two alternates to be selected.

Q. Did you see any of the jury selected?

A. The selection of alternates.

Q. When did that take place?

A. Tuesday afternoon.

Q. From what time until what time?

A. I would say that maybe it consumed an hour and one-half.

Q. Maybe an hour and one-half?

A. Yes.

Q. What time did you arrive at the courtroom on Tuesday afternoon?

A. Right after the morning session adjourned.

Q. What time was it you came to the courtroom?

A. Around noon.

Q. Right after the session adjourned?

A. Yes.

(473) Q. All right. Did you come back then after the adjournment?

A. I stayed around there because I was waiting for some of the members.

Q. In the courtroom?

A. Not in the courtroom.

Q. During the adjournment or noon recess?

A. That is right.

Q. What time did the court continue with the case then in the afternoon?

A. What time —

Q. Reconvene.

Miss Marion R. Ford-Cross

A. I would say about 1:30.

Q. Around —

A. Around 1:30.

Q. In other words, it took from then to an hour and one-half before the jury was selected, is that correct?

A. I believe so.

Q. What happened immediately after the jury was selected?

A. Then it was agreed that they would visit the scene—visit the Feasterville Inn.

Q. Now would it refresh your recollection if I said to you that the record indicates that the jury went to the scene at 2:04 P. M. on Tuesday afternoon?

A. 2:04 —

Q. Yes sir. Does that refresh your recollection?

A. Does it say what time they reconvened in the afternoon —

Q. I am asking you whether that refreshes your recollection as to how long it was in the afternoon before the jury was selected?

A. I thought about one hour elapsed.

(474) Q. Well, would you say that it was longer than from 1:30 until 2:04 P. M.?

A. I thought it was.

Q. But you are not sure?

A. I am not sure at that point.

Q. That is because this all happened quite a few years ago; isn't that right?

A. No, not that it all happened quite a few years ago, but the fact time when you are tense you have no idea just how quickly the time passes.

Q. When you are tense time goes more slowly or rapidly?

A. Sometimes depending on the circumstances.

Q. All right. Did you stay there in the courthouse until the jury came back from the jury view?

A. No sir.

*Q. You did not?

Q. What time did you leave the courthouse that afternoon?

A. Well, I would say shortly after court adjourned.

Q. Well now, you say you left, you weren't there when the jury returned; is that correct?

A. That is correct.

Q. Now, would it refresh your recollection if I told you the jury returned at 3:54 and that the court adjourned at 3:55 until Wednesday, June 9?

A. I was not there when they returned.

Q. You weren't there when they adjourned, were you?

A. No.

Q. So that you are incorrect about that?

A. I was incorrect about that. That is adjourned. When I said "adjourned," I meant adjourned to visit the Feasterville Inn.

(475) Q. Now yesterday you said you missed three sessions in the selection of the jury. There were only three sessions in selecting the jury, isn't that correct?

A. Well, I thought there was Monday morning, Monday afternoon, Tuesday morning and Tuesday afternoon.

Q. Now when you came in on Tuesday afternoon was Judge Boyer on the bench?

A. I believe he was.

Q. You believe he was. If the minutes of the Court of Quarter Sessions which have been introduced into evidence indicate only Judge Keller was on the bench, would that refresh your recollection?

BY MR. MARGIOTTI: We object. It isn't based on facts.

BY JUDGE MURPHY: The objection is overruled. We are trying to find out what the fact is.

BY MR. MARGIOTTI: I know, but when the District Attorney quotes a record he should quote it correctly.

BY JUDGE MURPHY: Let's see the Court of Quarter Sessions minutes.

A minute right there, the docket entry; the Relator's exhibit. According to this exhibit, which is "Relator's Exhibit No. 4," the docket entries read as follows:

"1948 June 8—Court Called at 9:30 O'clock A. M. Hon. Hiram H. Keller, President Judge presiding.

"Eo Die—Court took a recess at 12:10 O'clock P. M. until 1:30 O'clock P. M. * * *"

(476) "Eo Die—Court called at 1:30 O'clock P. M. The Prisoner, David Darcy being present in Open Court and represented by his Counsel, Webster S. Achey, Esq., and William Power, Esq., The Court directs the trial to proceed * * *".

So that there is nothing in the docket as of that moment as to who was on the bench.

BY MR. MARGIOTTI: That is right. That is the reason I was making my objection.

BY JUDGE MURPHY: That is on that phase of it.

BY MR. MARGIOTTI: That is correct.

BY JUDGE MURPHY: This sheet, which is part of Relator's Exhibit No. 116," reads as follows:

"1948 June 8—Court called 9:30 A. M. Hon. Hiram H. Keller, P. J. * * *"

The next sheet shows:

"Eo Die—Court recess 12:10 to 1:30 P. M. Defendant remanded into the custody of the Sheriff & returned to the Bucks Co. Prison * * *"

The next sheet shows:

"Eo Die: Call 1:30 P. M.

Defendant, David Darcy present in Open Court with his Counsel. The Court directs the trial to proceed, & that a Jury be sworn * * *"

The transcript of testimony at Page 261 shows:

"Recess taken from 12:05 p. m. to 1:30 p. m.

(477) "Jury called for attendance."

All right, that is the situation. We think you should reframe your question.

BY MR. VAN ARTSDALEN: Very well.

Q. Your recollection is then that Judge Boyer and Judge Keller both sat on the bench on Tuesday afternoon when court convened?

A. When court convened; that is my recollection.

Q. Do you remember whether Mr. Achey, at any time made any objection to Judge Boyer sitting on the bench?

A. I believe there was an objection. Now it may have been a sidebar conference. It may have been some notes I read.

Q. In other words, you are basing this statement on notes of testimony or something you read since the trial?

A. That may have been on that.

Q. You have no personal recollection of Mr. Achey ever raising any objection to Judge Boyer being there, do you?

A. It was my understanding that he had. It may have been from the notes that I have since read. I don't want to be too specific on that.

BY JUDGE WATSON: Did you hear counsel, Mr. Achey, make any objections in open Court?

BY THE WITNESS: I don't believe I did.

BY MR. VAN ARTSDALEN:

Q. Now, how many sessions then was it you attended from Tuesday noon on?

A. From Tuesday noon on.

Q. Yes m'am.

(478) A. Of course, as I said, Tuesday afternoon session —

Q. Yes.

A. Wednesday morning and Thursday morning I missed.

Q. You were not there Wednesday morning or Thursday morning?

A. No, I had to go to the office first. Friday morning I arrived late.

Q. So that you were there Tuesday morning, Wednesday afternoon —

A. No, Tuesday afternoon.

Q. Tuesday afternoon, I am sorry.

A. That is all right.

Q. Wednesday afternoon —

A. That is correct.

Q. Thursday afternoon —

A. That is correct.

Q. What about Friday?

A. Part of Friday morning, all of Friday afternoon, all of Friday evening, Saturday morning, Monday morning and Monday afternoon.

Q. All right. Now during any of the occasions that you were in Court was the courtroom cleared at any time by order of the Court?

A. Not that I don't recall any such order.

Q. You were not asked to leave at any time, were you?

A. No sir.

Q. Were there any disturbances in the courtroom?

A. I particularly recall Friday evening it was so very crowded and there was an awful lot of excitement going on.

Q. Were there any disturbances in the courtroom Friday evening?

A. Not other than excitement and noise; a lot of excitement, a lot of noise.

Q. What do you mean by "noise"; just people moving around?

(479) A. Going in the back, talking at the door entrance, they had discussions there. A very noisy and excited session, I would say.

Q. Well, was there any objection raised to any of it by Mr. Achey or any of the attorneys there?

A. I don't recall that.

Q. Do you recall whether the tipstaff or the Court clerk or anyone in the Court, had to call for order at any time during that session?

A. I don't recall it.

Q. Did they during any of the sessions have to call for order?

A. At the sessions at which I was present —

Q. Yes.

A. I don't recall any.

Q. Did the Court at any time ask for order at any time you were attending the trial?

A. No sir—it seems to me that there was some—the Judge asked at one time something about—there had been some rooms in the courthouse newly decorated and due to the crowds going in and out the walls had been damaged one way or another, and he asked them to please refrain from

doing any damage to the courtroom walls. I remember he asked, "Please be orderly."

Q. Did he call for order during the course of the trial because of any disturbances?

A. No, I don't recall any.

Q. Specifically Friday night did he call for order?

A. I don't recall his calling for order. I just recall the impression the session had on me.

Q. How did you know Judge Boyer?

A. Because he was on the bench—because we knew there were two (480) judges in the Court there, Judge Keller and Judge Boyer, and we knew that Judge Keller was the presiding judge. We knew that Judge Boyer had presided at the previous week's trial, the fact that —

Q. How did you know that—only what people told you?

A. Yes, and what we read in the paper.

Q. How did you know then when you came in Tuesday afternoon which judge was presiding at the trial?

A. Which judge was presiding at the trial —

A. Yes.

A. Of course, that came with the time you spent in the courtroom.

Q. In other words, there was no question in your mind even though there was two judges on the bench Tuesday afternoon, Judge Keller was trying the case?

A. The thing was, Judge Boyer would make so many appearances of such varied stays —

Q. Please try to answer my question.

A. He never left the bench, Judge Keller. He never left the bench during a session, Judge Keller.

Q. Just where was the judges sitting on the bench, please?

A. My recollection is two chairs there.

Q. Your recollection is two chairs there?

A. Two high-back chairs.

Q. And in which chair did Judge Keller sit?

A. Judge Keller sat on the left.

Q. Judge Keller sat on the left as he was facing; is that correct?

A. That is right.

Q. Now you have testified, I believe, that Judge Boyer came, walked off the bench on various occasions. Now, was he there all the time Tuesday afternoon that you were in Court; was he on the (481) bench?

A. To the best of my recollection.

Q. Did you see him confer on that occasion with Judge Keller at all?

A. I believe—I don't recall at that time.

Q. You don't recall?

A. Not during the selection of the jurors.

Q. As a matter of fact, you are not sure he was on the bench Tuesday afternoon, are you?

A. To the best of my recollection, he was.

Q. But you are not sure of it?

A. No, I wouldn't say I am sure of it.

Q. You say you think he stayed there the full time. What about, you weren't there Wednesday morning?

A. No.

Q. What time Wednesday afternoon—what time does the Court start?

A. 1:30, I believe.

Q. And did both judges come in on this occasion?

A. To the best of my recollection.

Q. But you are not sure?

A. I am not sure.

Q. Then you wouldn't know how long Judge Boyer stayed on the bench Wednesday afternoon?

A. No; his stays varied. That is why it is so difficult.

Q. His stays varied but you don't know how long he was on the bench Wednesday afternoon or if he was on?

Miss Marion R. Ford-Cross

A I don't believe there was a session I attended he did not make an appearance in the courtroom. He was on the bench, to the best of my recollection, every session with the exception of the two I mentioned, Friday night's session and the afternoon session (482) of the last day of the trial.

BY JUDGE MURPHY: Do you press your question?

BY MR. VAN ARTSDALEN:

Q. You are not sure, however, Wednesday afternoon whether Judge Boyer was even on the bench; isn't that correct?

A. I am sure he was on the bench at sometime.

Q. Sometime —

A. During the afternoon. Whether that was at the commencement of the afternoon session or later, I can not be specific.

Q. Incidentally, Miss Ford, did you make any notes as the case progressed as to when the judges were in there?

A. No, I did not.

Q. So that you are relying only on your recollection, is that correct?

A. That is correct.

Q. And since the case have you examined the notes of testimony and other records in this matter?

Q. Yes, I have.

Q. And have you consulted with Mr. Margiotti and other persons about this matter?

A. Mr. Margiotti and Mr. Pannell—I discussed it with them.

Q. Isn't it a fact some of the statements you are now making are based partly on your discussions and your examination of the record subsequent to the trial rather than on your own personal recollection?

A. It is not. It is based on my own recollection.

Q. And that was how long ago that this trial was held?

A. The trial started on June 7, 1948 and finished the following Monday, June 14.

Q. Who attended the trial with you, Miss Ford?

(483) A. The Darcy girls; the three Darcy girls.

Q. Every session you were there they attended with you?

A. I don't believe they were present at the Tuesday afternoon session. I was there but I don't believe they were there.

Q. You had the same seat throughout at the trial?

A. Yes sir.

Q. You had no difficulty at any time obtaining a seat did you?

A. Those seats were always more or less available.

Q. They were available. In other words, the tipstaff saved a special place for you?

A. No.

Q. Why were they available? How do you mean?

A. It was more or less accepted that the defendant's family and friends were seated in these particular seats and we always more or less could get those seats.

Q. There was plenty of room at all times?

A. No, there was not.

Q. There was not?

A. No.

Q. Now let's get down to that. How many people do you think were in the courtroom Tuesday afternoon when you came in?

A. Well, I don't think there was such a great crowd in the courtroom Tuesday afternoon when I came in.

Q. How many people do you think there were?

A. Well, perhaps 150—200 maybe.

Miss Marion K. Ford-Cross

Q. And how about Wednesday afternoon's session?

A. I would say more.

Q. How many more?

A. 200.

Q. Well, now, you said, that Tuesday afternoon you thought —

A. About 150 to 200.

484 Q. About 150 to 200?

A. Yes.

Q. Wednesday afternoon about 200?

A. 200—225; I mean a slight increase.

Q. How about Thursday morning?

A. Thursday morning, 300. In other words, an increase at each session.

Q. An increase at each session. You are quite positive of that?

A. That is my recollection.

Q. How about Thursday afternoon?

A. Well; an increase—I would say 325; in through there.

Q. How about Friday morning?

A. Friday morning, 350; in through there.

Q. In other words, it went up just about —

A. An increase at each session that I attended.

Q. —of about twenty-five people?

A. I am saying that. It is awfully hard to give figures on something like this.

Q. You are giving the figures, Madam.

A. Yes sir.

Q. How about Friday afternoon?

A. Friday afternoon I would say a much larger increase.

Q. How many people?

A. Say 400-425.

Q. That is a much larger increase?

A. Yes sir.

Q. How about Friday evening?

A. Jammed to capacity, and people standing.

Q. How many people do you think were in the courtroom Friday evening?

(485) A. Well, let me see here—is it all right to ask you how many people the courtroom would accommodate?

BY JUDGE MURPHY: No, answer the question.

BY THE WITNESS: Over 500.

BY MR. VAN ARTSDALEN:

Q. How about Saturday morning?

BY MR. MARGIOTTI: Friday evening —

BY THE WITNESS: Friday evening people were standing.

BY JUDGE MURPHY: Jammed to capacity, people standing, over 500.

BY THE WITNESS: Also all the seats they had here practically every seat taken, that were reserved for the members of the bar.

BY MR. VAN ARTSDALEN:

Q. How about Saturday morning?

A. Another crowded session, a very crowded session.

Q. How many people do you think were in there?

A. Well, a capacity crowd.

Miss Marion R. Ford—Cross

Q. How many people do you think were in there?

A. I would say 500.

Q. How about Monday afternoon?

A. The same thing, a capacity crowd, as many as it would accommodate and people standing around.

Q. How many do you think the courtroom would hold?

A. Five to six hundred.

Q. And I noticed you were looking at the exhibit there at that time. Was that that you were trying to calculate the number (486) of seats?

A. I was trying to recall.

Q. What do you remember the evidence that was produced at the Friday evening session—the general nature of the evidence?

A. Fairly well.

Q. What was it, please?

A. Well, to the best of my recollection, the ballistics expert spent considerable time giving testimony.

Q. You have read the notes of testimony to refresh your recollection?

A. I have not read anything with reference to that.

Q. You have not?

A. No. That is from memory.

Q. I believe you testified on Friday evening Judge Boyer was sitting with Mr. Biester?

A. That is right.

Q. Where was Mr. Biester sitting?

A. Mr. Biester was sitting in the chairs reserved for members of the bar.

Q. Who was trying the case?

A. Mr. Curtin.

Q. Mr. Curtin was?

A. Yes.

Q. He was presenting the evidence that evening?

A. Mr. Curtin had more or less taken over Friday evening.

Q. And he was doing the questioning?

A. Mr. Biester would leave the prosecution table and come over and sit in these chairs reserved for members of the

Q. Did Mr. Curtin ask any questions?

A. Ask any questions —

(487) Q. Yes m'am.

A. I believe so:

Q. You believe that he did?

A. I believe that he did.

Q. If I would say to you the record in which the—indicates Mr. Biester asked questions and there were no questions asked by Mr. Curtin, would you change your testimony?

A. Well; you mean at this particular Friday night session —

Q. Yes m'am:

A. Mr. Biester I didn't say he didn't ask questions. I said he would leave —

BY JUDGE MURPHY: As we understand it—as we recall it—as the Court recalls it, you said that Mr. Biester sat with Judge Boyer throughout the entire proceeding on Friday night over where the lawyers were. That is what you said before.

BY THE WITNESS: I am sorry; I didn't mean it that way.

BY JUDGE MURPHY: We will take a ten-minute recess.

(Recess.)

(Court resumes after the recess with all parties, including the Relator, David Darcy, present in Court.)

MISS MARION FORD, recalled.

CROSS-EXAMINATION (Continued).

BY JUDGE MURPHY: Read Mr. Van Artsdalen's question, Mr. Reporter.

Question of Mr. Van Artsdalen read by the Reporter as follows: "Q. If I would say to you the record in which the—indicates Mr. Biester asked questions and there were no questions asked by Mr. Curtin, would you change your (488) testimony?"

BY MR. VAN ARTSDALEN:

Q. Now on that Friday evening.

BY MR. MARGIOTTI: He is assuming the record shows one thing when it does not.

BY JUDGE MURPHY: Your witness has said, as we understand, Mr. Biester and Judge Boyer sat together on the sidelines throughout the session. The question is: If I were to show you the transcript and the transcript shows Mr. Curtin did not ask a question but Mr. Biester conducted the whole examination, would that change your testimony?

BY MR. MARGIOTTI: The record does not show that Mr. Biester did at all.

BY JUDGE MURPHY: We refer you to Page 769.

BY MR. MARGIOTTI: I refer Your Honor to another page. I refer Your Honor to Page 814.

BY JUDGE MURPHY: Starting at 769 Mr. Biester is asking the questions.

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: That takes to 771.

"MR. BIESTER: That is all I am going to ask him now.

"MR ACHEY: I will not question him at this point."

The next witness; "By Mr. Biester," then the questioning (489) 772, 773 by Mr. Biester again; 774 "By Mr. Biester," 775 the questioning goes on; 776 "By Mr. Biester," the questioning by Mr. Biester; 777 the questioning goes on, 778, 779, 780, 781; at this time Mr. Biester makes a statement again; Mr. Biester questions at 782; 783; questioning goes on 784; "Mr. Biester" 785; questioning goes on, "Mr. Biester," 786, 787; questioning goes on 788, 789, 790, 791, 792, 793, 794; Mr. Achey's cross-examination 795, 796, 797, 798; 799 Mr. Biester addressed the Court offering in evidence various cartridges; 800 "Mr. Biester" again; 801 "Mr. Biester" again on many occasions; 802 Mr. Biester examining Mr. John J. Hanlon; 803 questioning going on; 804 "Mr. Biester," 805, 806, 807; 808 "Mr. Biester"; 809 "Mr. Biester; If the Court pleases * * *," again he makes a statement; then cross-examination by Mr. Achey part of 809, 810; 811 "Mr. Biester" again twice, 812, 813 and so on. All right.

BY MR. MARGIOTTI: What I am calling your attention to is on page—beginning with the bottom of Page 813.

BY MR. VAN ARTSDALEN: I am coming to that as part of my cross-examination.

Miss Marion R. Ford-Cross

BY JUDGE MURPHY: It is your witness.

BY MR. MARGIOTTI: I make the objection. There are a number of pages that Mr. Curtin read to the jury a statement that was offered in evidence and it was marked.

BY MR. VAN ARTSDALEN: Your Honor, I intend —

(490) BY MR. MARGIOTTI: — "CX-69"; which would give him an opportunity at least during the reading of that statement to sit where he pleased.

BY JUDGE MURPHY: Are you though?

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: Proceed with your questioning.

BY MR. VAN ARTSDALEN:

Q. Miss Ford, do you remember Mr. Curtin asking any questions during that Friday night session?

A. Asking any questions —

Q. Yes m'am.

A. I believe I recall Mr. Curtin reading the — what was it — statements of the boys.

Q. You knew Mr. Margiotti just said that — didn't he?

BY MR. MARGIOTTI: I beg your pardon! I didn't say that at all.

BY JUDGE MURPHY: The record is the best evidence.

BY MR. VAN ARTSDALEN:

Q. Did Mr. Curtin ask any questions that you recall?

A. I have only a recollection of his reading the statements and at that time Mr. Biester was not sitting at the prosecution table.

Q. Madam, is your answer no to that last question?

A. The answer is no; I am sorry.

Q. Now, didn't you state earlier that Mr. Curtin was conducting the examination that night?

(491) A. Sir, I believe I didn't make myself clear. What I meant was that when Mr. Biester would be away from the prosecution table Mr. Curtin would more or less take over.

Q. What do you mean by "more or less take over"?

A. I meant that if there was—for instance, when he was reading the statements of the boys Mr. Biester left the table and went over and he was sitting next to Judge Boyer during the reading of the statements—during the judge's charge to the jury.

Q. No; the judge's charge to the jury wasn't Friday evening, was it?

A. No sir.

Q. And when did Judge Boyer come into the courtroom that evening?

A. Friday evening's session —

Q. Yes m'am.

A. To the best of my recollection, he was there when Court convened that evening.

Q. And how long was that evening session, please?

A. Oh, perhaps two hours or a little more.

Q. And for how long a period of time was Mr. Biester sitting with Judge Boyer?

A. Well, I would say at least one-half hour.

Q. At least one-half hour. What part of the evening was that, please?

A. If my memory serves me correctly, it was toward the end of the session.

Miss Marion R. Ford—Cross

Q. Toward the end of the session?

A. It was when Mr. Curtin was reading the statements.

Q. In other words, you are now saying it was while Mr. Curtin was reading the statements and only during that period?

A. That is what I recall particularly.

(492) Q. After the statement was read did Mr. Biester ask any further questions?

A. After the statement was read—pardon me! Would you please repeat —

Q. I withdraw that question. After the statement was read by Mr. Curtin did Mr. Biester examine other witnesses?

A. I believe so.

Q. How many?

A. I couldn't recall.

Q. I am talking about that evening session.

A. I understand. I don't recall.

Q. Did Mr. Biester ask other questions after the statement was read that evening?

A. After the statement was read —

Q. Yes m'am.

A. I thought so. I don't recall exactly.

Q. Well, if I would tell you that the record indicates that after the statement was read by Mr. Curtin the Court took an adjournment until the following morning; would that refresh your recollection?

A. Well, I said before I didn't recall exactly.

Q. But you are quite sure now as to the time that Mr. Biester went over to talk to Judge Boyer?

A. Was sitting next to him.

Q. The courtroom was crowded that night?

A. Yes sir.

Q. Were the chairs around the semicircle in front of the railing—were they all filled?

A. Practically every chair.

Q. Practically every chair. Were some of them vacant?

(493) A. Well, the thing that I recall—there might have been a chair or two vacant at the entrance.

Q. Well, where was Judge Boyer seated?

A. Judge Boyer was sitting immediately opposite the jurors to Judge Keller's right.

Q. Let's see if we can't identify it a little better as to what chair it was on the plan. Judge Boyer you say was sitting at a place which you have marked on this exhibit as Judge Boyer's chair; is that correct?

A. Yes sir.

Q. Now then, who was seated to Judge Boyer's left during that whole—to Judge Boyer's right?

A. Mr. Biester.

Q. You mean the chair was empty until Mr. Biester came over there?

A. There were different people came and stopped and talked to Judge Boyer.

Q. Do you know who any of them were?

A. I personally don't know who any of them were, but I do know someone pointed out someone and said, "That is Senator Watson."

Q. You don't know anybody that was there?

A. I don't know. He was pointed out to me as Senator Watson.

Q. Am I correct—it just happens the chair was vacant at the time Mr. Biester went over there?

A. I suppose so.

Q. Were there any other vacant chairs in front of the courtroom in front of that railing?

A. Toward the entrance there were some vacant chairs there.

Q. Toward the entrance there were some vacant chairs there?

Miss Marion R. Ford-Cross

A. Yes sir.

(494) Q. Yet you say there were people standing in the courtroom?

A. They are reserved for the members of the bar. People were standing back here.

Q. People were standing back here?

A. Yes:

Q. Do you know whether or not

BY MR. MARGIOTTFI: "Back here." May we have the record indicate where she pointed to?

BY JUDGE MURPHY: You may do it on redirect. Where do you mean by that?

BY THE WITNESS: I mean as you enter there is a platform level that goes to both sides depending on which side of the courtroom you are going to sit in. There were people standing at the top level of the courtroom.

BY MR. VAN ARTSDALEN:

Q. About how many people?

A. Well, I would say in the section where I was seated, oh, perhaps one-half dozen.

Q. How many were standing in the courtroom altogether?

A. I couldn't answer that.

Q. Can't you give us any approximate idea?

A. No sir, I couldn't.

Q. Why not?

A. Just in my particular area.

Q. So, that you only observed one-half dozen people standing?

A. In my area.

(495) Q. What do you mean by "my area"?

A. Well, as I would look back here I could see the people there.

Q. You mean you didn't look around the courtroom?

A. Of course, as you looked—looked in the courtroom at the other side all you saw was a mass of people. It would be difficult to pick out people standing or sitting.

Q. You mean you didn't look around the courtroom?

A. Yes sir, I did. I mean I couldn't very well tell in the other end of the room if there were sitting or standing.

Q. How many times did Mr. Biester come over and talk to Judge Boyer that evening?

A. I just recall him on this one occasion.

Q. Now then, you were how close at that time to where Judge Boyer was seated?

A. How close? I would say a distance of approximately eight feet.

Q. Did you hear him say anything at that time?

A. No sir.

Q. Judge Boyer didn't take any part in the proceedings at that time, did he?

A. Not that evening.

Q. How far was he sitting from where the nearest juror was seated?

A. Immediately across the room.

Q. How far?

A. The distance of the courtroom; I would estimate.

Q. Give us an approximate idea.

A. An approximate idea—oh, sixty feet.

Q. How far?

A. Sixty feet.

Q. Sixty feet. Now then, between Judge Boyer and the jury there (496) were chairs and tables, were there not?

A. Yes sir.

Miss Marion R. Ford—Cross

Q. And then there were people seated in those chairs, is that not correct?

A. Between Judge Boyer and the jury there was the prosecution table.

Q. Yes. And there was also, was there not, a series of chairs grouped in there for members of the press and for members of the bar?

A. Yes sir.

Q. And there was another table intervening?

A. That is right.

Q. Were there people seated around that table? I am not talking about the defense table. There was another table intervening?

A. Yes, there was. I have no recollection of people sitting at the second table.

Q. You mean there was no one sitting there?

A. No. That is where the evidence was being placed. I have a recollection of people going there and putting evidence there, but I have no recollection of people sitting there.

Q. How many people were sitting at the defense table?

A. The defense table—three. I would say three, sir.

Q. How many people were sitting at the prosecution table?

A. It is difficult to say. They were getting up, going and coming all the time. I would say as many as perhaps eight.

Q. Did Judge Boyer get up and leave the room at any time that evening during the session of Court?

A. During the Friday evening session I have no recollection of his leaving.

(497) Q. He merely sat there and did not get up and leave the room at any time that evening during the session of Court?

A. That is correct.

Q. Did you see me there at that session?

A. I don't recall you, sir.

Q. You recall Mr. Curtin, do you not?

A. Yes.

Q. Now, he is a pretty rapid reader, isn't he—talker?

A. Well, I don't say that he is out of the ordinary. I mean he didn't strike me as being out of the ordinary.

Q. How long did it take him to read this statement?

A. How long did it take him —

Q. Yes m'am.

A. I would say about one-half hour.

Q. Now, did Mr. Achey object in any way to Judge Boyer being in the courtroom that evening?

A. You mean his sitting there as a spectator —

Q. Yes sir.

A. No sir.

Q. And he was sitting there strictly as a spectator, was he not?

A. As a spectator on that occasion.

Q. Now, Miss Ford, if I say that the statement covers from Pages 814 through 826 in the notes of testimony, would that be helpful to you in ascertaining how long Mr. Curtin—or refresh your recollection as to how long Mr. Curtin read that statement?

A. From Pages 814 to 826 —

Q. Yes m'am; 12 pages.

A. 12 pages—oh, better than one-half hour.

Q. Double-spaced. You say it is your recollection that would take him about one-half hour?

(498) A. Yes sir.

Q. How long did the evidence or testimony take that was presented that evening?

A. Perhaps one and one-half hour.

Q. And if I told you that the notes of testimony indicate

Miss Marion R. Ford—Cross

that that took from near the bottom of Page 769 up to Page 814, would that refresh your recollection in any way—or rather from the bottom of Page 768?

A. May I ask you—if that refreshes my recollection as to the length of time consumed —.

Q. Yes sir.

A. No sir, I am afraid it wouldn't.

Q. Now, coming to the time of the charge by Judge Keller; you recall that quite well, do you?

A. Yes sir.

Q. And at what time did the charge start?

A. I believe that it started at 1:30.

Q. 1:30 in the afternoon; is that correct?

A. Yes sir, I believe.

Q. How long did it take?

A. Approximately one hour.

Q. Now, where was Mr. Biester seated during the period that the charge was being made?

Q. A. Mr. Biester was seated in the chairs reserved for the members of the press immediately opposite the jurors.

Q. Now, Miss Ford, when you say that "reserved for the members of the press" —

A. And the bar.

Q. —will you show on "Exhibit No. 135" where you mean; where you indicate?

Q. A. I mean in this chair here immediately next to Judge Boyer.

(499) BY JUDGE MURPHY: Will you point it out?

(Witness indicates.)

BY JUDGE MURPHY: The witness indicates the second chair in the front of the second section from the left; the second chair front of the second section from the left.

BY MR. VAN ARTSDALEN:

Q. You mean that Judge Boyer was seated there throughout the charge of the Court?

BY MR. MARGIOTTI: We object because the question was concerning Mr. Biester and now he says "You mean that Judge Boyer * * *."

BY MR. ARTSDALEN: I will clarify it.

BY MR. MARGIOTTI: If you clarify it, I have no objection.

BY JUDGE MURPHY: We will permit that question. Was Judge Boyer seated next to Mr. Biester throughout the charge of the Court?

BY THE WITNESS: Yes sir.

BY MR. VAN ARTSDALEN:

Q. There is also on this diagram a table that intervenes between the place where you have indicated Judge Boyer and Mr. Biester was seated and the counsel table for the District Attorney; is that correct?

A. That is right.

Q. And there are chairs grouped around that table. Were there (500) chairs grouped around that table at the time of the charge?

A. I believe there were.

Q. Were there persons seated there?

A. Not all the time.

Q. Well, were there persons seated there any of the time?

Miss Marion R. Ford—Cross

A. Sometimes, yes.

Q. How many persons?

A. Maybe two, maybe three.

Q. Now, as a matter of fact, do you know whether that is also used by members of the bar?

A. No, I don't, sir.

Q. Who was seated at the District Attorney's table during the charge?

A. To the best of my knowledge, Mr. Curtin, the Chief of Detectives —

Q. Who was he?

A. Ross, I believe.

Q. What did he look like?

A. I don't recall what he looked like exactly. To the best of my recollection, he was not too tall a gentleman.

Q. Who else was seated there?

A. I believe some State Policemen.

Q. Were they in uniform?

A. I don't believe so.

Q. How many State Policemen?

A. Oh, perhaps two, maybe three.

Q. But Mr. Biester was not there?

A. At the time of the charge.

Q. You are quite sure of that?

A. I am quite sure of that, sir.

(501) Q. You say State Policemen. How do you know they were State Policemen?

A. Pointed out to me, sir.

Q. Pointed out to you —

A. As State Policemen; and the County Detective was pointed out to me as such.

Q. Had any of them testified during the trial?

A. Some of them had, sir.

Q. That were seated there?

A. Yes, I believe so.

Q. Do you remember their names?

A. Not offhand, sir.

Q. Well, you heard their testimony —

A. The County Detective, I think his name was Ross or Rossi.

Q. Refreshing your recollection—Anthony Russo.

A. Anthony Russo; I am sorry.

Q. You can't recall the names of any of the State Police-men you say were seated there?

A. No sir; I am sorry.

Q. During the charge of the Court did you hear Judge Boyer and Mr. Biester make any statements to each other?

A. No sir.

Q. How close were you seated to them?

A. Approximately eight feet.

Q. All right. Now then, when was it that Mr. Biester got up from that chair?

A. He took the note from Judge Boyer —

Q. When was it that he got up from the chair?

A. I don't quite follow you on that question.

Q. Can you give it to us in relation to point of time in the
(502) charge?

A. Yes, sir.

Q. All right.

A. Judge Keller had finished—practically finished his charge to the jury, looked down at both the prosecution table and the defense table and he said, "Have I forgotten anything? Have I made any mistakes?" or words to that effect.

Q. All right. Did Mr. Biester get up immediately after that?

A. No sir.

Q. He did not?

Miss Marion R. Ford—Cross

A. No sir.

Q. How long did he stay there?

A. Judge Keller went on with his closing remarks and had been talking for a few minutes, I would say, when Judge Boyer passed the note to Mr. Biester.

Q. And then did—they were seated together, Judge Boyer and Mr. Biester?

A. Yes sir.

Q. You saw all during the charge?

A. Yes sir.

Q. And you saw Judge Boyer hand a note to Mr. Biester?

A. Yes sir.

Q. You never read the contents of that note, did you?

A. Who? Me

Q. Yes.

A. No sir.

Q. Do you know what was on that note?

A. No sir. I only know the reaction.

Q. Do you know if there was anything written on that note at all?

A. I only know that Mr. Biester put—no sir.

(503) Q. Did you observe any writing or printing on that note at all?

A. No sir, I did not.

Q. What kind of paper was it?

A. It was a sheet of white note paper.

Q. White note paper?

A. Yes sir.

Q. Was it ruled or plain?

A. I couldn't tell, sir.

Q. Pardon

A. I couldn't tell, sir.

Q. You weren't close enough to see?

A. I wasn't close enough to see if it was ruled or plain, no sir.

Q. Were they seated at the time the note was passed?

A. Yes, sir.

Q. Was anything said between them at that time?

A. I heard nothing, Sir.

Q. You heard nothing. Now then, what was the first you observed as to that note?

A. The first that I observed as to that note—I am looking diagonally at Judge Keller and listening very intently —

Q. As matter of fact —

BY MR. MARGIOTTI: May we ask that the witness complete the answer?

BY JUDGE MURPHY: Go ahead.

BY THE WITNESS: Judge Boyer and Mr. Biester were to the left of my line of vision; as I stated before, Mr. Biester was sitting in a very relaxed position with his feet outstretched and his arms resting on the arms of the chair. My attention was directed to Mr. Biester as he sat upright in the chair and accepts his note, puts it in reading position; I didn't see words or lines or anything; I just saw him put it in position to read, jump up immediately after reading the note and then go right immediately to the bench, which was some distance away. He had to go to the center of the courtroom and then up to the bench, and he stood there, and, of course, it was a very tense moment. Mr. Biester stood there for several minutes waiting to attract the attention of Judge Keller —

BY MR. VAN ARTSDALEN:

Q. We will come to that again. You did not see Judge Boyer write anything on that paper?

Miss Marion R. Ford—Cross

A. No sir.

Q. You don't know, as a matter of fact, whether Judge Boyer wrote anything on that paper?

A. No sir.

Q. You don't know, as a matter of fact, whether there was any communication on that note from Judge Boyer to Mr. Biester, do you?

A. No sir; I do not.

Q. What was done with the note after Mr. Biester stood up in front of the Court?

A. I don't know what was done with the note after Mr. Biester stood up in front of the Court.

Q. Do you have any recollection what happened to the note?

A. No sir. Mr. Biester's back was to me. He stood there for several minutes. I don't know what he ultimately did with the note.

Q. It wasn't handed up to Judge Keller?

A. I couldn't say. His back was to me.

(505) Q. Madam —

BY JUDGE MURPHY: Do I understand now it is your distinct recollection as of now that you don't know whether Mr. Biester handed anything to the Court?

BY THE WITNESS: No sir; I don't recall. His back was to me.

BY JUDGE MURPHY: You didn't see him hand anything to the Court?

BY THE WITNESS: No sir.

BY MR. VAN ARTSDALEN:

Q. Madam, in order to clarify one part of your testimony, the courtroom is so located—I think you said somewhat similar to this, so far as the bar is concerned; in other words, the judges sit up at a high bench?

A. Yes sir.

Q. In front of that there is another long low bench?

A. Yes sir.

Q. So that it would have been impossible, would it not, that is for Mr. Biester to hand directly to Judge Keller?

A. Directly, yes.

Q. Did you see Mr. Biester at any time go behind the first table and speak directly to the Court at that time?

A. I have no such recollection.

Q. Would you say that did not happen?

A. I have no recollection of its having happened.

Q. Now, Madam, I think that you testified that the Court asked whether there was anything more, or words to that effect, before (506) the note was handed to Mr. Biester; is that correct?

A. That is correct, sir..

Q. Now, do you recall whether the Court said: "Have I overlooked anything?" or "Are there any corrections to be made?" and Mr. Achey replied: "Nothing for the defendant, Your Honor,"—is that correct?

A. Yes sir, to the best of my recollection.

Q. You say the Court went on beyond that?

A. Judge Keller proceeded to make his closing remarks, as I recall it.

Q. How much longer?

A. Oh, perhaps another five or ten minutes.

Q. Before Mr. Biester said anything?

A. Mr. Biester stood up and was standing before the bench for some few minutes before Judge Keller recognized him.

Miss Marion R. Ford—Cross

Q. I am not talking about where he was standing before he said anything?

A. Before Mr. Biester said anything would you please repeat the question?

Q. You stated after Mr. Achey replied he had nothing further to say, or words to that effect, that the Court went on and closed its charge for a period of about five or ten minutes; is that what you said?

A. That is right.

Q. And the Court did that before Mr. Biester said anything to the Court, is that correct?

A. Before Judge Keller recognized Mr. Biester.

Q. Did Mr. Biester say anything before Judge Keller recognized him?

A. No sir. He was standing before the bench. He said nothing.

(507) Q. He said nothing?

A. That is right.

Q. Madam, if—I ask you whether this portion of the record will refresh your recollection—Page 905 and 906:

"THE COURT: Have I overlooked anything? Are there any corrections to be made?

"MR. ACHEY: Nothing for the defendant. Your Honor ***"

BY MR. VAN ARTSDALEN: Will the Court now mark my time on this, please?

"—Members of the jury, a word in conclusion. I have instructed you as to what I understand to be the law bearing upon all the questions that arise in this case, as well as the substance of the testimony bearing upon the shooting, as I recall it. I trust I have made myself clear and that I have succeeded in giving it to you so that you comprehend and understand it. What does it indicate to your minds as jurors?

"I may add that in the rendition of your verdict, if you convict this defendant of murder in the first degree, then you will not only have to announce the verdict but also to announce the punishment, what the punishment shall be."

"MR. BIESTER: Your Honor, I may have misunderstood part of your charge, but I thought that you said that if the shooting of Kelly was unintentional, that would be murder of the second degree; that if it were during the flight from the crime it would be murder in the first degree ***"

BY JUDGE MURPHY: The actual time you are reading—48 seconds.

BY MR. VAN ARTSDALEN:

(508) Q: Does that refresh your recollection?

A. He didn't go quite that fast. You were reading and not putting any expression in it. He was talking and being very expressive.

Q. Did the Court say anything besides that before Mr. Biester said anything?

A. No sir.

Q. That is your recollection?

A. That is my recollection.

BY JUDGE MURPHY: May I say 48 seconds may or may not indicate anything. The gentleman started at 18 seconds and stopped at 6, so I am taking 18 plus 30 equals 48 seconds.

Let's go on from there.

BY MR. VAN ARTSDALEN:

Q: Madam, would you still say it took—the Court went on for approximately five or ten minutes?

Miss Marion R. Ford—Cross

A. Perhaps I am taking into consideration all of the discussion.

Q. Yes. I understood you to say the Court went on another five or ten minutes?

A. To make his closing remarks.

Q. Did Mr. Biester make any remarks?

A. Apparently it didn't take quite that long.

Q. How long do you think it did take?

A. Well, if it took you 48 seconds, it took Judge Keller maybe three and one-half to four minutes.

Q. Now, Madam, if I say to you that that takes up—the portion that I read—less than one page of the notes of testimony, and that the portion that I referred you to that Mr. Curtin read as to the statement, which takes up approximately twelve pages (509) of the notes of testimony, would you still say that Mr. Curtin's statement took about one-half hour to read?

A. May I please have that question again?

BY JUDGE MURPHY: Do you understand the question?

BY THE WITNESS: I believe I do.

Mr. Curtin is reading—he is reading a written statement. Judge Keller is speaking. He is not speaking from any notes. He is speaking—he is making his charge. They are his own thoughts; they are his own expressions, and it is only natural I should think it would take him much longer than reading a written statement.

BY MR. VAN ARTSDALEN:

Q. How long did the charge of the Court take?

A. To the best of my recollection, about an hour.

Miss Marion R. Ford—Cross

Q. And the notes of testimony indicate—and the Court spoke more slowly than Mr. Curtin, is that correct?

A. That is my recollection, sir.

Q. Did Mr. Achey make any objection to the statements made by Mr. Biester at the close of the Court's charge?

A. I have no recollection of his making such an objection, sir.

Q. Madam, if I said to you that the charge of the Court, as the notes of testimony are transcribed, takes approximately forty-three pages on the notes of testimony, would that refresh your recollection as to how long the Court's charge was?

A. To the best of my recollection, the charge of the Court lasted approximately an hour.

(510) Q. Isn't it a fact, Madam, that after the Court asked whether he had overlooked anything, Mr. Biester immediately went up?

A. It isn't a fact, sir.

Q. It isn't a fact?

A. It isn't a fact, sir.

Q. So he remained seated there for sometime?

A. Mr. Biester made absolutely no reply nor no answer and continued to sit in his relaxed position.

Q. How long did he continue to sit in his relaxed position after the Court made that statement?

A. Until Judge Boyer passed the note and he took it.

Q. How long after Judge Keller asked, "Have I overlooked anything? Are there any corrections to be made?" was it before Judge Boyer passed the note to Mr. Biester?

A. It might have been a matter of seconds.

Q. It might have been a matter of seconds?

A. Yes.

Q. Did Mr. Biester get up immediately after?

A. Mr. Biester read the note, jumped to his feet and immediately went to the bench.

Miss Marion R. Ford—Cross.

Q. Then I think you said he wasn't recognized for a matter of five or ten minutes; later I think you changed that; you said it might be three minutes?

A. I said—I believe, sir, that I said he stood there for several minutes. At least it seemed several minutes to me. You must remember the moment was very tense.

BY JUDGE MURPHY: As we understand the situation now, the witness has described that the Court asked a question of counsel and the defense counsel got up and answered but the District Attorney (511) sat there and didn't apparently respond to the Court until Judge Boyer handed him a paper whereupon he sat upright, got up and went to the Court. Whether the paper was a note or not is a problem—a paper is where we are at now—with or without lines, with or without symbols.

BY MR. VAN ARTSDALEN:

Q. Did you bring this fact to the attention of Mr. Achey at that time?

A. No sir.

Q. When was the first time that you brought this fact to the attention of Mr. Achey?

A. I never had any contact or relations with Mr. Achey, Mr. Van Artsdalen.

Q. To whom did you first bring this fact or call attention to this circumstance?

A. We had only discussed it among the family.

Q. When?

A. After it happened. And we have been discussing it for six years.

Q. How long after it happened?

A. That same day, sir.

Q. Did you call it to the attention—did you know whether it was called to the attention of Mr. McBride?

A. Again, sir, I couldn't say. As I told you previously I had nothing to do with the engagement of Mr. McBride.

Q. You didn't call it to his attention?

A. No sir.

Q. Or anyone connected with his office?

A. No sir.

Q. Now let me just ask you one or two general questions. Miss (512) Ford. Did you observe any disturbances in and about the courtroom when you were there during the Darcy trial?

A. Other than the Friday night session—I mean there seemed to be—but that I don't mean there were any outbursts or anything of that order, but there was an attitude of excitement and crowds and things of that sort at the Friday night session, particularly; at least, that is the one session that so impressed me, sir.

Q. How did the jury come in and go out? Can you point that out on that diagram?

A. I believe there was a door back there somewhere, sir.

Q. Was there a door right where the jury sat?

A. Well, the spectators, I believe, and the witnesses were immediately back of the jury; they sat intermingled, the witnesses and spectators, immediately back of the jury.

Q. I am asking you whether you know how the jury came in and left the courtroom.

A. I believe there was a door to the back of the jury box.

Q. And about how near to the nearest juror?

A. Sir, I would hesitate to say; I don't recall the exact distance.

Q. What I am arriving at is the jury was at no time taken through the main corridor or through the place where the spectators sat?

Miss Marion R. Ford—Cross

A. No sir.

Q. How about the defendant—did he also come in and go out by this side door?

A. Yes sir.

(513) Q. And was he at any time taken through the main corridor of the courtroom?

A. No sir. But he was—on more than one occasion he would arrive before Court convened and he would sit here.

Q. You are indicating a chair right in the center section in front of the railing that separates the floor from the benches for witnesses and spectators?

A. Yes sir. He would sit here, as I said, on more than one occasion right before Court convened, and he would be here and, of course, witnesses and spectators and not were seated here.

Q. Were any of the rows of seats barricaded or blocked off so that the people could not sit there?

A. You mean back here in the spectators' section —

Q. Yes sir.

A. No sir.

Q. What about the row of seats immediately behind the seats you said where the defendant sat?

A. To the best of my recollection, there were people sitting there.

Q. That is the best of your recollection?

A. Yes sir.

Q. Are you sure there were people seated there?

A. I am pretty sure, sir.

Q. Did you at any of the sessions observe attorneys or lawyers handing up papers to the Court?

A. I have no such recollection, sir.

Q. Would you say there were not?

A. You mean to —

Q. Not connected with this case. Isn't it a fact at the

opening of every session the Court came in and asked whether there were (514) any miscellaneous matters?

A. I must say that I wasn't too prompt in arriving. I didn't arrive promptly as Court convened in the morning.

Q. Do you mean you missed every session on the opening?

A. No. I would say it would not be unlikely that the judges were already on the bench and perhaps if Court convened at 10:00 o'clock, perhaps I would arrive at 10:15.

Q. You mean on the sessions you testified you attended throughout you came in after the Court was on the bench?

A. Not everyone, sir.

Q. What ones?

A. I particularly recall Saturday that I was there very promptly, as well as Monday.

Q. Well, everytime you came in was Judge Boyer seated up there on the bench?

A. Everytime —

Q. Yes.

A. To every session —

Q. Yes sir.

A. No sir.

Q. What sessions was it you came in you saw him seated up there with Judge Keller?

BY MR. MARGIOTTI: Isn't that repetition?

BY JUDGE MURPHY: We will take it.

BY THE WITNESS:

A. Which sessions?

BY MR. VAN ARTSDALEN:

Miss Marion R. Ford—Cross

Q. Yes, sir.

A. It is very difficult to say, sir, because his appearances were (515) so varied and his stays of different durations, it is very difficult to be specific.

Q. Well, I am not asking about how long he was there. I am asking how many times you came into the courtroom when the Court had already convened that you observed both judges sitting on the bench.

A. I am afraid, sir, I can't answer that question.

BY JUDGE MURPHY: Did you, Madam, at any time during the whole trial see lawyers other than those who were in this case appear before the two judges? First, do you understand the question?

BY THE WITNESS: No sir.

BY JUDGE MURPHY: Read the question, Mr. Reporter.

(Court's question read by the Reporter.)

BY JUDGE MURPHY: —at any time from the time that you arrived in the courthouse for the first time? You understand that?

BY THE WITNESS: Yes sir.

BY JUDGE MURPHY: For the first time in connection with the Darcy trial until the last time that you appeared in the courtroom in connection with the Darcy trial, did you during that interval, the whole interval, at any time ever see lawyers appear before the two judges other than those connected with the case, so far as you know?

BY THE WITNESS: I do not recall, sir, seeing any other

Miss Marion R. Ford—Re-direct

attorneys who were (516) not connected with the case appearing before the judges.

BY JUDGE MURPHY: Go ahead, gentlemen.

BY MR. VAN ARTSDALEN: That is all..

RE-DIRECT EXAMINATION:

BY MR. MARGIOTTI:

Q. Now, Miss Ford, the District Attorney has read what the Court said after asking "Have I overlooked anything? Are there any corrections to be made?" and His Honor has timed how long it took the Court to say that, but immediately after that Mr. Biester spoke and said:

"Your Honor, I may have misunderstood part of your charge; but I thought that you said that if the shooting of Kelly was unintentional, that would be murder of the second degree; that if it were during the flight from the crime it would be murder in the first degree."

That thereafter the Court said:

"I specifically stated it was completely abandoned in the case of flight or escape.

"That becomes important only, members of the jury, if you are convinced beyond a reasonable doubt that this shooting of Kelly did not occur during the perpetration of a robbery."

Now, do you remember whether Mr. Biester said anything else after that—after the Court said what it said?

A. Yes sir.

Q. Do you remember that Mr. Biester said—I am reading from the record, Page 906:

"MR. BIESTER: I am sorry but I don't think that would

Miss Marion R. Ford—Re-direct

be beyond a reasonable doubt, that it would be on (517) the preponderance of the evidence that it was during the commission of a robbery. I think Your Honor inadvertently said that they would have to believe that beyond a reasonable doubt that it was not."

The Court said:

"If I did, that will be withdrawn."

And then Mr. Achey asked for an exception.

This all occurred after you saw Mr. Biester standing before the Court and seeking to draw the Court's attention?

A. After he was recognized by Judge Keller.

Q. Will you state whether or not at the time you have—at the two times ~~you~~ have referred when Mr. Biester sat next to Judge Boyer on Friday night for a while and next to Judge Boyer during—at the end of the trial when the Judge charged the jury and you say you observed a note passed from Judge Boyer to Mr. Biester, whether they were in view of the jury?

A. Yes sir.

Q. Were these chairs and tables that have been called to your attention interfering with the view that each would have of the other, if you know?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: We will take it.

Were they, the Judge and the District Attorney, sitting where the jury could see them?

BY MR. MARGIOTTI: That is all I want.

Q. Were they sitting where they could be seen by the jury?

(518) A. Yes Sir.

Miss Marion R. Ford—Re-cross

BY MR. MARGIOTTI: That is all.

RE-CROSS EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. That is 60 feet away with people in between?

BY JUDGE MURPHY: You have shown they were 60 feet away. We have pictures and a diagram of the courtroom. The question is could the jurors see if they looked? They probably could if they had normal vision if they looked to see.

BY MR. VAN ARTSDALEN: That is all.

(Witness excused.)

BY JUDGE MURPHY: We will take a ten-minute recess.

(Recess.)

(Court resumes after the recess with all parties, including the Relator, David Darcy, present in Court.)

Joseph Darcy—Direct

MR. JOSEPH DARCY, called and sworn on behalf of the Relator, on direct and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Darcy, have you been sworn?

A. Yes sir.

Q. Mr. Darcy, you are a brother of the Relator in this case?

A. Yes sir.

Q. How old are you?

A. I will be thirty in April.

Q. What do you do?

A. I am an insurance adjuster.

Q. I want you to state whether or not you attended your brother's (519) trial at Doylestown.

A. I did, sir.

Q. How many sessions did you attend?

A. I attended the afternoon session on Wednesday, the afternoon session on Thursday, the afternoon session on Friday and Friday evening, Saturday morning and Monday morning and Monday afternoon.

Q. While you were attending those sessions did you have occasion to mingle with the public in that community?

A. Not particularly. I would park my car and then go right into the courtroom.

Q. Did you have any discussions with any members of the public and citizens of this County in and about Doylestown?

A. No sir.

Q. Concerning your brother?

A. No sir.

Q. All right. Where did you sit in the courtroom?

A. I would come into the main entrance from the front of the courthouse and would turn at the top to the left and would generally sit on the left-hand side in the aisle to the left of the main stairway down leading to the body of the court.

Q. I am going to show you some pictures—rather than the map—and I am going to ask you to look at these pictures, "Relator's Exhibits Nos. 118, 119, 120 and 121," and tell me whether or not any of those pictures would show the position that you usually occupied in attending your brother's trial?

A. Yes sir.

Q. Have you selected one?

A. This picture right here.

Q. You have now selected "Relator's Exhibit No. 121", and does it show approximately the place that you occupied?

(520) A. I would say it does. In through this section I generally sat from the couple of rows down, and sometimes down further in the front.

Q. Would that be the first section or the second section from the left-hand side?

A. I would like to look at the picture again, please.

Q. I am considering—I am calling "left-hand side"; I shouldn't call it the "left-hand side"; the right-hand side. I am considering right to the Judge as the Judge sat.

A. As the Judge sat. In other words —

BY JUDGE MURPHY: Is there any objection on the part of the Commonwealth to using the very same diagram the other witnesses used?

Joseph Darcy—Direct

BY MR. VAN ARTSDALEN: No.

BY JUDGE MURPHY: Is there any particular reason why it shouldn't be used?

BY MR. MARGIOTTI: Because Your Honor suggested marking that diagram somebody would get an idea.

BY JUDGE MURPHY: They have no objection they say, and certainly the Court has none.

BY MR. MARGIOTTI: I thought the Court indicated we should not use it. For that reason it wasn't marked.

BY JUDGE MURPHY: It will help the Court if you will use the diagram.

BY MR. MARGIOTTI: That is what I thought. But I don't want to use the (521) diagram if it is going to aid the witness in selecting the spot that was used by somebody else.

Q. Do you understand the diagram, "Relator's Exhibit No. 135"?

A. Yes sir, I do.

Q. You do. Could you point to the place about where you would be seated during these various sessions?

A. Generally there are places I would sit according to the location—if I could find a seat in this section I would generally sit in this section. That is what I was interested in doing. I would generally sit in this section—through in these seats there.

Q. You are indicating the second section from the right —

BY JUDGE MURPHY: Would it be near where your aunt was sitting?

BY MR. MARGIOTTI: No. It would be in that same section but it would be toward the end.

BY JUDGE MURPHY: Whereabouts, young man?

BY THE WITNESS: I would generally come down this aisle —

BY JUDGE MURPHY: The witness indicates the second section as you stand facing the bench in the diagram and about the middle of the section—was it?

BY THE WITNESS: Toward this side:

BY JUDGE MURPHY: Toward the right of the second section which appears on the left side of the diagram as you face the bench, that is as I face the bench looking at this exhibit, the diagram, "Re- (522) lator's Exhibit No. 135".

BY MR. MARGIOTTI:

Q. It was wherever you could get a seat in there?

A. That is correct.

Q. Did you always have the same position or different positions different days?

A. Different positions different days.

Q. In attending this trial will you state whether or not you got to learn who Judge Boyer was?

A. Pardon—will you repeat that?

Q. Did you get to learn who Judge Boyer was?

A. Yes sir.

Joseph Darcy--Direct

Q. Did you see Judge Boyer during the trial?

A. I did.

Q. How many times did you see him?

A. I saw Judge Boyer on the bench on Wednesday afternoon, Thursday afternoon, Friday afternoon. That is the limit of it, as I recall.

Q. Three times?

A. Yes sir.

Q. Did you see him any time off the bench?

A. Yes sir.

Q. When?

A. During Judge Keller's charge to the jury on Monday afternoon.

Q. Now when you saw him on the bench those three afternoons that you have mentioned, Wednesday, Thursday, and Friday, I think you said, do you remember how long he was on the bench?

A. A good part of the afternoon; in other words, almost the whole session.

Q. Was he there as Court convened in the afternoon or did he come in (523) while Court was going off?

A. As I recall, he was—as I recall now, the best of my recollection, the fact he came in when the Court had started and had gone out just before the finish for the afternoon. He generally, as I recall, came in that way.

Q. And what part of the bench did he occupy?

A. The seat next to Judge Keller; it would be on Judge Keller's right.

Q. Judge Keller's right?

A. Yes sir.

Q. Who would be then nearest to the jury, Judge Boyer or Judge Keller?

A. Judge Keller.

Q. Did you observe what he did during the three afternoons he sat on the bench?

A. He conferred at different times with Judge Keller when Mr. Biester was interviewing witnesses or cross-examining witnesses.

Q. Were there any conferences when questions came up about objections or anything like that?

A. I suppose so but I didn't —

Q. Don't suppose.

A. I don't know whether any occurred.

BY MR. MARGIOTTI: I withdraw the question; I withdraw the answer.

Q. The time that you saw him in the body of the courtroom—how many times did you say it was?

A. I recall seeing him once at the charge.

Q. That was at the time of the charge?

A. Yes sir.

Q. And where was he when you saw him?

(524) A. May I point it out on the diagram?

Q. Yes.

A. He was sitting opposite the jury in a section inside the body of the court on a chair there.

Q. Will you state whether or not at that time there was more than one table for the Commonwealth?

A. Yes sir, there was.

Q. How many?

A. I believe there were three or four tables.

Q. And how were they arranged; so far as positions are concerned, length-wise or cross-wise, or what?

A. They were arranged—the first table was in front of the jury and the other tables followed behind.

Q. That is toward where you were sitting?

A. No. I am sitting here. They are right behind the prosecution table as indicated. There was another table right behind the prosecution table and another table.

Joseph Darcy—Direct

Q. I see. Where did you point out the place you saw Judge Boyer?

A. In this vicinity here as indicated.

Q. You say in this vicinity here as indicated —

A. On one of these chairs; that is right.

Q. What do you mean by "as indicated"?

A. I see it has here "Judge Boyer" in the seat here.

I know he was opposite the jury.

Q. Do you know whether that was the chair he was on or some other chair near there?

A. Probably he was on one of those chairs near there —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY:

Q. Do you know what chair he was on?

(525) BY THE WITNESS: No sir. I couldn't say, but I know —

BY JUDGE MURPHY: He said it was in the area where Judge Boyer was marked before. We will let it stand.

BY MR. MARGIOTTI:

Q. Did you observe any other person near him at the time?

A. At the charge I saw District Attorney Biester sitting next to him.

Q. Did you observe anything take place while the charge was going on?

A. Yes sir, I did.

Q. What part of the charge did you observe something?

A. Towards the end of the charge, I believe.

Q. Towards the end of the charge?

A. Yes.

Q. You just tell us what took place and what you observed yourself.

A. Well, I saw Judge Boyer and Judge Biester—District Attorney Biester sitting together in that position. One of the tables were in front of them. I noticed towards the end of the charge Judge Boyer lean forward and write this note. He then handed or passed it to Mr. Biester. Mr. Biester read it, got up, walked across the courtroom floor up to the bench and waited to be recognized by Judge Keller and then interrupted the Judge and then they had a conversation.

Q. You say you noticed Judge Boyer write the note?

A. Yes sir, I did.

Q. What did he write it on?

A. A piece of paper, of note paper, I suppose.

Q. What was the paper resting on?

(526) A. It was resting on—it was resting on the prosecution table—on one of the tables behind the prosecutor.

Q. Do you know what was on that note?

A. No sir, I do not.

Q. Do you know what became of the note?

A. No sir, I do not.

BY MR. MARGIOTTI: You may cross-examine

CROSS-EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Darcy, what adjusting agency do you work for?

A. Employers Group Insurance Company.

Q. How long have you been so employed?

A. I have been there seven years. Prior to that I had one year training under the G. I.—one year's training—with the Owen B. Hunt Adjustment Bureau.

Q. You stated that when you came into the courtroom on these various occasions you usually took a seat over in that one particular section?

A. That is right.

Q. Did you ever have any difficulty obtaining a seat in there?

A. I think I said I would take a seat where I could find one.

Q. Now did you observe—you were there during the Friday night session, is that right?

A. Yes sir.

Q. Did you observe Mr. Biester and Judge Boyer sitting together at any time during that session?

A. I don't recall. It was so crowded, there were so many there, I didn't take particular notice of Judge Boyer or Mr. Biester being together.

(527) Q. You didn't observe it on Friday evening, is that right?

A. That is right.

Q. Now the charge took place what day?

A. Monday afternoon.

Q. Did you have the same seat Monday afternoon that you had Friday evening?

A. I wouldn't say, sir. I said I would take a seat wherever I found one.

Q. Was it approximately the same location?

A. Approximately the same location, yes sir.

Q. How many rows back were you from the—at the spectators' bench—how many rows from the front spectators' bench?

A. When —

Q. At the time of the charge.

A. At the time of the charge I would say I was in the third row back, right here.

Q. The third row back?

A. That is right.

Q. Are you sure of that?

A. As far as I can remember, I was sitting there in that section, yes.

Q. Did you see Miss Ford there at that time?

A. I don't recall seeing her, no. I was by myself.

Q. You knew Miss Ford at that time?

A. She is my aunt.

Q. Where was Judge Boyer sitting throughout the charge?

A. During the charge he was sitting in one of these seats right here.

Q. You are pointing to one of the chairs in front of the place—of the section where you were sitting, is that correct?

(528) A. As I remember, yes.

Q. There are rows of chairs that circle around in front of the spectators' and witnesses' benches, is that right?

A. As I remember, I would say yes.

Q. Those chairs are separated by a railing, is that correct of some sort?

A. You mean from spectators inside of the body of the Court there —

Q. Yes.

A. Yes.

Q. Is that a solid type of railing?

A. I don't know. I didn't go around the floor looking at them.

Q. How high is it?

Joseph Darcy—Cross

A. How high is it? I would say it was about two or three feet.

Q. Now at the time of the charge was the courtroom filled?

A. I believe it was pretty well filled, yes.

Q. How many persons were in the courtroom at the time of the charge?

A. Oh, approximately 350.

Q. 350?

A. Yes.

Q. Were there people seated in front of you?

A. Yes, there were.

Q. Were all the seats taken in front—immediately in front of you?

A. That section was pretty crowded, yes.

Q. During the charge—were you observing Judge Keller during the charge?

A. I was observing Judge Keller and Judge Boyer.

Q. Now between the railing in front of the section where you were (529) sitting, how many tables were there up to the place where the jury was?

A. You mean the prosecution table —

Q. How many tables altogether were there between—in front of the section where you were sitting?

A. Not in front of the section where I was sitting. I am not saying that. I am saying the prosecution tables were in front of the jury. There were three or four tables behind it.

Q. Was that true throughout the trial?

A. As I recall, it was, yes.

Q. During the charge of the Court were there any people seated in front of Judge Boyer?

A. In front of him —

Q. Yes.

A. You mean at his table or the table that was in front of him —.

Q. Were there any—was there a table immediately in front of Judge Boyer?

A. Approximately three or four feet in front of him, I suppose.

Q. Do you recall?

A. That I am saying I believe that is how far in front of him it was.

Q. You testified he wrote on a table, is that correct?

A. As I remember, he did.

Q. Was he sitting at a table or one of those chairs?

A. He was sitting on one of those chairs. They weren't using the other two tables in the back, as I recall, just used the first two.

Q. Was anyone sitting between Judge Boyer and the place where the jury was seated?

A. The prosecutor.

(530) Q. How many people were seated at that table?

A. I am just giving a guess—three or four anyway.

Q. During the charge?

A. I suppose there was.

Q. Where was Mr. Biester seated?

A. During the charge —.

Q. Yes sir.

A. He was seated next to Judge Boyer.

Q. Throughout the charge?

A. Throughout the charge.

Q. You are sure of that?

A. Positive.

Q. Now how many tables were there between Judge Boyer and where you say Mr. Biester was seated and where the jury was seated?

A. Three or four.

Joseph Darcy - Cross

BY JUDGE MURPHY: At that point we will take a recess until 2:00 o'clock.

(Recess.)

(Court resumes at 2:03 P. M. with all parties, including the Relator, David Darcy, present in Court.)

MR. JOSEPH DARCY, recalled.

CROSS-EXAMINATION (Continued).

BY MR. VAN ARTSDALEN:

Q. Mr. Darcy, will you tell us again, please, where you were seated at the time of the charge of the Court?

A. Yes sir. May I look at the map again? This section right here.

Q. Now you are indicating what is the second section from the left as you enter the courtroom from the corridor, is that correct?

A. That is correct.

(531) Q. And how many rows back were you from the railing that separates the spectators' benches from the main floor of the courtroom?

A. If that is the row of seats, I suppose it would be the third row back.

Q. The third row back?

A. Yes sir.

Q. How far were you from the railing that separates the spectators from the rest of the courtroom?

A. You mean in feet or something like that —

Q. Yes.

A. 10 feet, I suppose.

Q. How far were you from Judge Boyer?

A. How far —

Q. Yes.

A. Probably about twenty feet approximately.

Q. Judge Boyer was to your left, is that correct?

A. That is right.

Q. But he was on a chair, was he not, immediately in front of this railing that separates the spectators' benches from the rest of the courtroom?

A. Yes.

Q. Now then, did he remain seated there throughout the charge of the Court?

A. Yes.

Q. Are you sure of that?

A. Positive.

Q. And you observed, you say, Judge Boyer write something on a piece of paper?

A. Correct.

Q. Judge Boyer's back was to you at the time, was it not?

(532) Q. A. It wasn't no.

Q. Will you relate what position his body was to you?

A. In the position of my seat I could look off to my left and see Judge Boyer to the left of Mr. Biester.

Q. Well, Judge Boyer was sitting in the same direction as you were; however, was he not?

A. No, he was off to my left.

Q. Was he facing in the same direction?

A. Was he facing in the same direction?

Q. Yes sir. ☺

A. Well, I say the courtroom is a circular direction and if we were facing that way he is facing the jury and my

Joseph Darcy—Cross

direction would be facing more or less the bench on an angle.

Q. You mean he was facing the jury and you were facing the bench?

A. That is correct.

Q. Now, where was this—did Judge Boyer get up and go over to the table to write on it?

A. No.

Q. Where was the table in relation to where he was seated?

A. In front of him.

Q. Directly in front of him?

A. Not directly in the front; he was to the side.

Q. How far apart?

A. The right end of the table would be in front of him.

Q. How far from where he was seated?

A. I think he sat three or four feet away.

Q. Did you observe any people walk between where he was seated and that table?

A. Did I observe any people walk between where he was seated and that table?

Q. Yes.

(533) A. No, I didn't.

Q. Wasn't there a passage-way for people to go through?

A. If there was three or four feet there would be a passage-way, wouldn't there?

Q.

A. Yes, there was a passage-way there.

Q. How did he get over to the table?

A. He leaned forward.

Q. Three or four feet?

A. Yes.

Q. You said there was sufficient distance, a passage-way, for people to walk through there?

A. Surely.

Q. Were there any chairs immediately behind the table?

A. No sir, there was not.

Q. You are quite sure of that?

A. Positive.

Q. You affirm your sister's testimony that Judge Boyer and Mr. Biester were seated together throughout the charge?

BY MR. MARGIOTTI: We object.

BY JUDGE MURPHY: Reframe your question.

BY MR. VAN ARTSDALEN: I withdraw the question.

Q. Mr. Darcy, Miss Ford is your aunt?

A. That is correct.

Q. Do you agree with her testimony that Mr. Biester and Judge Boyer were sitting together?

(534) BY MR. MARGIOTTI: We object because the witness can only answer for himself.

BY JUDGE MURPHY: Reframe your question.

BY MR. VAN ARTSDALEN:

Q. Mr. Darcy, was Judge Boyer and Mr. Biester sitting alongside of each other throughout the charge?

A. Yes sir.

Q. And did either of them get up from their chairs during the charge?

A. At the time the note was passed Mr. Biester got up, as I said before, crossed the room and up to the bench.

Q. Did he get up before the note was passed?

Joseph Darcy—Cross

A. No.

Q. Was he seated on a chair at the time the note was passed?

A. That is correct.

Q. Was the note held up in the air in some way?

A. No.

Q. How was it passed?

A. It was just passed right to him.

Q. On the table or in the air?

A. He wrote it on the table and just passed it to him. He was sitting beside him.

Q. Didn't you say Judge Boyer was sitting at the end of the table?

A. Yes.

Q. Was he in front or behind Mr. Biester?

A. He was beside.

Q. Immediately beside?

A. That is correct.

(535) Q. Were the chairs that close together?

A. Yes sir.

Q. As you looked over to Mr. Biester and Judge Boyer, what part of their body did you see?

A. I saw the right side, I would say, of Mr. Biester and I could see part of the back and face of Judge Boyer, who was on his left.

Q. Were they seated immediately in front of the railing that separates the spectators' benches from the main floor of the courtroom?

A. I can give you a better judgment on that by saying they were in a line with the jury or behind the prosecution tables.

Q. Mr. Darcy, I want to show you "Relator's Exhibit No. 119", being a photograph of the courtroom. Do you recognize that photograph?

A. Yes.

Q. Now you will observe there are certain chairs, are there not, directly against the railing that separates the main floor of the courtroom from the spectators' benches, is that correct?

A. Yes, that is correct.

Q. Was it on one of those chairs that Judge Boyer was seated?

A. One of those chairs —

Q. Yes.

A. Yes.

Q. Was it on one of those chairs that Mr. Biester was seated?

A. Yes, sir.

Q. Were those chairs immediately against the railing as depicted in that picture?

A. I would say that they were, yes.

Q. Where was this table?

(536) A. There were, as I said, three or four tables composing the prosecutor or District Attorney's section and they were directly behind each other.

Q. You don't mean to say that Judge Boyer was sitting at the District Attorney's table?

A. No. He was sitting in the chair behind the District Attorney's tables.

Q. How far behind?

A. How far behind what? The District Attorney's table

Q. The District Attorney's table.

A. Three or four feet.

Q. Three or four feet beyond the District Attorney's table?

A. He was sitting in that chair and the District Attorney's table was in front of him.

Joseph Darcy—Cross

Q. You don't mean to convey he was sitting in a chair immediately behind the District Attorney's table?

A. He was off to the right edge of the table.

BY JUDGE MURPHY: The witness has said he was sitting three to four feet behind the District Attorney's table. That is exactly what he has said.

BY MR. VAN ARTSDALEN:

Q. Now, did Mr. Biester get up immediately after the note was handed to him?

A. After he read the note he got up.

Q. Was the note handed before or after Judge Keller asked the counsel if there was anything else?

A. That I don't remember.

Q. Were you sitting with any other members of your family at that time?

A. No sir; I was seated by myself.

(537) Q. Did you bring this to the attention of Mr. Achey who was trying the case?

A. No sir, I did not.

Q. Who is the first person you brought this to the attention of?

A. Who is the first person I brought this to the attention of _____

Q. Yes.

A. As I said, after the court was finished we discussed the trial and things like that.

Q. Whom do you mean by "we"?

A. At home, my aunt and sisters.

Q. And do you know whether it was brought to the attention of Mr. McBride?

A. No sir, I do not.

Q. You didn't bring it to his attention?

A. No sir; I never met Mr. McBride. As a matter of fact, I never met Mr. Achey.

Q. Did you make any notes of the proceedings at the time that you were there?

A. No sir.

Q. So that what you are testifying from now is recollection only, is that correct?

A. What do you mean by "recollection"?

Q. Well, are you testifying from your recollection of what happened?

A. As I saw it—I am testifying to that.

Q. Have you read the record in this case?

A. No sir.

BY MR. VAN ARTSDALEN: That is all.

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Darcy, at the time of the passing of the note will you state whether or not Judge Boyer and Mr. Biester were in view of the jury?

A. Yes sir, they were; they were in line with the jury.

Q. All right. Were you there when the verdict came in?

A. Yes sir, I was.

Q. Did you observe the nature of the crowd that was there when the verdict came in?

A. A good-sized crowd, I would say.

Q. Did you observe what, if anything, happened, so far as the crowd and the jurors were concerned?

A. Yes sir. I remember this, that after the jury had returned its verdict and was dismissed by the Judge, why the

Joseph Darcy—Re-direct

jurors then converged with the spectators, and I saw the spectators and the jury, they were shaking hands and patting each other on the back, things like that. They were doing that in the courtroom, up the steps and out into the hallway, I suppose, where they got their pay-checks, I don't know.

Q. All right. You said something about you being—are you a G.I.?

A. Yes sir, I am.

Q. Were you in the war?

A. Yes sir.

Q. What war?

A. The Second World War.

Q. How many years?

A. Four years in the Navy.

Q. Four years in the Navy. Did you see active duty?

A. Yes sir.

Q. Where?

(539) A. The South Pacific; Guam, through the Marianas; and I was on the aircraft carrier Saratoga.

Q. Will you state whether or not you were honorably discharged?

A. Yes sir, I was.

Q. While you entered the jury room—strike that. When you entered the courtroom during the trial of your brother, I want you to state whether or not you observed any person or persons with a magazine in their hands.

A. Yes sir.

Q. Do you remember the name of the magazine?

A. I believe it is called "The Front Page Detective."

BY MR. VAN ARTSDALEN: I think we have the right to know when this occurred.

Joseph Darcy—Re-direct

BY JUDGE MURPHY: If they don't fix it, somebody else will.

BY MR. MARGIOTTI:

Q. Do you remember when that was?

A. Yes sir, I do very clearly; the first day I appeared in the courtroom.

(Front Page Detective Magazine marked "Relator's Exhibit No. 136".)

BY MR. MARGIOTTI:

Q. I show you "Relator's Exhibit No. 136", and I want you to state whether that is a copy of the magazine that you mentioned.

A. Yes sir, that is.

Q. I call your attention to what appears on Pages 34, 35, 36, 37, and some other pages following. Does that story appear in that magazine?

A. Yes sir, it did.

BY MR. VAN ARTSDALEN: (540) I object.

BY JUDGE WATSON: You haven't offered it.

BY MR. MARGIOTTI: I haven't offered it as yet.

BY JUDGE WATSON: We will get it later then.

BY MR. MARGIOTTI:

Q. I want you to state where you first saw this magazine—in what part of the courtroom?

Joseph Darcy—Re-direct

A. What part of the courtroom —

Q. Yes.

A. As I entered the courtroom from the main doors, which face the Judge's bench, I saw two young fellows about eighteen or nineteen years old sitting in the top row, right-hand side, with the magazine opened to that story.

Q. To the story that I have just referred to?

A. Yes sir. Now there were other occasions that same day—do you want me to explain that?

Q. Yes.

A. My attention was immediately attracted to that part and I looked over to the left sections here where I saw a group of about fifteen men, I would say, together, it appeared to me, in a party, and they had between them two to three magazines and they had it opened to the part showing the pictures of the boys. This one magazine I saw right here. The other part, I believe, had one showing the caption of the story, and the other magazine was just opened to this part here with the pictures of the boys. They were discussing the thing between them, and I then saw them look at the picture and point down to the defendant and were (541) verifying the fact —

Q. Don't state what they were doing.

A. I presume that is what they were doing.

Q. Did you hear them say anything?

A. No, I just saw them point.

Q. You saw them point to Mr. Darcy. Now this magazine is dated in June, 1948?

A. Yes sir.

Q. Have you any knowledge when this magazine reached the stands in Bucks County?

A. Well, I could tell you when it was first called to my attention, and that was approximately a week or so prior to the Foster-Zietz trial.

Q. Where did you see it?

A. I was in a barber shop on Frankford Avenue and Bridge Street and while in there the barber asked me if I had seen the magazine or did I hear about it.

Q. It was called to your attention at that time?

A. That is right.

Q. You have no information as to the extent that it was circulated, if at all, in Bucks County?

A. No sir, I do not.

BY MR. MARGIOTTI: If the Court please, we offer "Relator's Exhibit No. 136" in evidence—the magazine "Relator's Exhibit No. 136".

BY MR. VAN ARTSDALEN: It is objected to.

BY JUDGE MURPHY: Well, for what it is worth, if it will throw any light, we will take it.

BY MR. MARGIOTTI:

(542) Q. Mr. Darcy, will you look at the film —

BY JUDGE MURPHY: Just a minute!

BY MR. MARGIOTTI: I beg your pardon! I am sorry.

BY JUDGE MURPHY: I notice on Page 34 that this refers to a hold-up on the night of December 5, 1947. Is that some other hold-up? The first paragraph: " * * * Bell's Corner near Philadelphia on the night of December 5, 1947 * * * ". We understood this killing was on December 22. Page 34, the first paragraph —

BY JUDGE WATSON: What is the purpose of this?

Joseph Darcy - Re-directed

BY MR. MARGIOTTI: This is for the purpose of showing a publication distributed in the County of Bucks.

BY JUDGE WATSON: What type of publication?

BY MR. MARGIOTTI: A publication that would be inflammatory and would be prejudicial.

BY JUDGE WATSON: Referring to this particular killing--does it refer to this killing?

BY MR. MARGIOTTI: Yes sir, it does. It refers not only to the Feasterville killing but its pages contains the case Your Honor called to my attention; December 5 was one previous robbery —

BY JUDGE MURPHY: Is it?

(543) BY MR. MARGIOTTI: I think it is.

BY JUDGE MURPHY: It says:

"The two men were looking for trouble—but in their own good time. Nattily dressed, nervously alert, they strolled into the Deppenschmidt tavern at Bell's Corner near Philadelphia on the night of December 5, 1947 * * *."

The indictment here says "December 22, 1947".

"Both were young trim, dark haired. They moved across the floor and mingled inconspicuously with the crowd. One pulled a dollar bill from his pocket and tossed it on the bar. 'Two beers,' he said casually.

"They sipped their brew and eased the joint thoroughly. It was a typical Friday night crowd at 1:30 A. M. Saturday morning * * *"

Does the indictment say Friday night or Saturday?

BY MR. VAN ARTSDALEN: It specifies only the date.

BY JUDGE MURPHY: "December 22, 1947."

BY MR. MARGIOTTI: I call your attention to what appears on Page 37 where the names of the four boys appear.

BY JUDGE MURPHY: I know. I wonder if we are talking about the same case.

BY MR. MARGIOTTI: That is a question.

BY JUDGE MURPHY: (544) Now then, it describes purportedly something that happened on the 22nd. There is talk about the night of the killing—on the first page—on December 5. Then it talks about a man named Watson and Coffin—men named Watson and Coffin ——

BY MR. MARGIOTTI: They were involved in other crimes that were introduced for the purpose of fixing the penalty.

BY JUDGE MURPHY: They say there people were held up, at least the first page seems to convey that fact. That is the Court's recollection.

"Walter Watson chats with George Clinger after a battle with bandits in which Watson's hand was hurt and Clinger was shot in the leg * * *."

There was no Watson or Clinger shot on December 22. There was a man whose name started with "H"—Hellerman. He was brought in in a wheelchair.

"Oh, Red!" the girl screamed. "What have they done?" The bandit menaced her with a gun. "You're too late," he snarled. "The guy's done for."

Joseph Darcy—Re-direct

There is nothing like that in this case, as I recall the evidence.

Now then, on Page 36 —

BY MR. MARGIOTTI: I am looking particularly at the picture.

BY JUDGE MURPHY: —something about Lieutenant Hanlon, and there was a Lieutenant Hanlon here.

BY MR. MARGIOTTI: And the Feasterville Inn.

(545) BY JUDGE MURPHY: Now according to this calendar which we have, and this would be in 1947, December 22, it was on a Monday night and not on a Friday night. However, there is some discussion here about it. Then there is on Page 37 some mention of "Harold Foster, Harry Zietz, and David Darcy were held on murder charges. A 16-year-old companion was turned over to juvenile officials." So that we will receive it for whatever light it will throw.

So far the evidence is the young man on going into the courtroom—we don't know whether the Court was in session or not—he saw two young fellows eighteen or nineteen with this magazine, which does not bear a publication date. As we see it, there is a copyright date but not a publication date. I may say the Court has presided at a three-week trial on magazines as to how they are published and how they come out. At any rate, he said he saw two young fellows at one time or other and at one time or other he saw fifteen men. We will take it for whatever it is worth.

BY MR. MARGIOTTI: All right.

The magazine is dated June.

BY JUDGE MURPHY: The magazine is dated June. That is no indication when those things come out.

BY MR. MARGIOTTI: I think you are right. I had experience along the same line. It is dated June.

(546) BY JUDGE MURPHY: It has June on it.

BY MR. MARGIOTTI: It has June on it. Whether it comes out in May or June, I don't know.

You want a copy of that —

BY JUDGE MURPHY: All right; the offer has been received.

BY MR. MARGIOTTI:

Q. Now then, there was some television film marked for identification only. I am going to have them marked as "Exhibit No. 112". Will you look at that exhibit and tell me whether or not you can recognize anybody on that exhibit?

A. Yes sir, I do.

Q. Who do you recognize?

A. I recognize three men. Would you like me to name them?

Q. Yes sir.

A. Looking in this direction on the left I see Harold Foster; in the center is David Darcy; and on the right is Harry Zietz.

Q. Now I am asking you to look at "Exhibit No. 113", and do you recognize anybody on that?

A. So far I just see two policemen.

Q. Do you recognize them, whether you see two policemen or not? Do you recognize the policemen?

Joseph Darcy - Re-direct

A. No sir, I do not. Q

BY MR. MARGIOTTI: May I withdraw "Exhibit No. 113" so marked for identification only. Since it has not been properly identified, I don't want to leave it in the record.

(547) And I offer in evidence "Relator's Exhibit No. 112", in which the witness has identified his brother and two other defendants.

BY MR. VAN ARTSDALEN: That is objected to.

BY MR. MARGIOTTI: This is only offered for the purpose of showing that the defendant and others were televised in the County of Bucks.

BY MR. VAN ARTSDALEN: It is objected to for that specific reason.

BY MR. MARGIOTTI: I think we have a witness from the radio station.

BY JUDGE MURPHY: What was the man's name from WFIL, Philadelphia?

BY MR. MARGIOTTI: Koehler.

I didn't hear you say, Judge, you admit this "No. 112".

BY JUDGE MURPHY: All right, we have testimony from a Mr. George A. Koehler that the exhibit in question was a film fifteen to twenty seconds; we will take it for whatever light it throws. He said it was a silent film; there was no running commentary or at least there is no running commentary available.

Joseph Darcy - Re-direct

BY MR. MARGIOTTI: I think Your Honor is absolutely right.

BY JUDGE MURPHY: This witness is now saying, as we understand it, not that he saw the television but on this film, which was on the screen for fifteen to twenty seconds at some time, that he recognizes the picture of the three defendants.

(548) BY MR. MARGIOTTI: That is right.
Have you voted on my withdrawal of "No. 113"?

BY JUDGE MURPHY: I understand counsel has a right to withdraw anything he desires.

BY MR. MARGIOTTI: I also want to withdraw "No. 114" because it has no bearing here. It was advertised as an award.

BY JUDGE MURPHY: I have Criminal Docket No. 2 as "No. 114". What is Criminal Docket No. 2? I want to know what Criminal Minute—Criminal Minute Book No. 2—what is the number of it? "No. 115" are the original papers; "No. 114" is the book. What is the number of the Criminal Minute Book? We understood we asked you not to mark the book but put something on the cover. Did you, Mr. Reporter?

BY THE REPORTER: Yes sir.

BY JUDGE MURPHY: That is "No. 115".
What is the number of the original papers in the envelope?

BY MR. KAUFMAN: "No. 116."

Joseph Darcy—Re-direct

BY JUDGE MURPHY: You say the original papers are "No. 116".

All right, let me see the paper that is being withdrawn. Mr. Margiotti has it. All right. The paper—right—1-21-48, Philadelphia Inquirer, is being withdrawn. Go ahead.

(549) BY MR. MARGIOTTI:

Q. By the way, at the time you saw the magazine called "Front Page Detective" that you just referred to, will you state whether or not the Court was in session or not in session?

A. Yes sir, it was.

Q. During the trial?

A. Yes sir.

BY MR. MARGIOTTI: That is all.

BY JUDGE MURPHY: Do I understand you now to say that while the Court was on and the trial was up nineteen men were assembled together in the courtroom looking over a magazine while the trial was on?

BY THE WITNESS: Not nineteen. Approximately fifteen. I noticed approximately fifteen in this one section

BY JUDGE MURPHY: Standing or sitting?

BY THE WITNESS: Sitting—in a discussion.

BY JUDGE MURPHY: Fifteen of them were discussing this magazine while a murder trial was on?

BY THE WITNESS: Pointing to pictures and pointing to the defendant, yes sir.

BY JUDGE MURPHY: All right.

(550) RE CROSS EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. That was on Wednesday you say when you first went in?

A. That is right.

Q. That was the first time you went into the trial?

A. Wednesday afternoon.

Q. The first thing you observed was a couple of men reading the magazine?

A. I observed two boys sitting on the right—called my attention to it.

Q. Where were they—in the rear of the courtroom?

A. Yes sir; at the top section.

Q. On the right as you went in?

A. On the right as I went in the main aisle.

Q. Two of them with a magazine. How far were they from you?

A. I walked right in and stood right there within five feet of them, I suppose.

Q. Were they seated?

A. They were seated.

Q. You went you went to your right?

A. Left. I went in the main aisle section to go to the left. I noticed these men here. I looked down over the body.

Q. You mean in that one look at them you knew what that magazine was?

Joseph Durey - Re-cross

A. Yes sir.

Q. Had you ever seen the magazine before?

A. I have.

Q. Had you seen it before?

A. Yes, I have.

Q. Before that date?

(551) A. Yes, I saw it before that date.

Q. Where did you see it before that date?

A. On the day it was called to my attention by the barber approximately one week or so before the trial of Foster-Zietz began.

Q. Where were the fifteen men we are talking about that were discussing the magazine?

A. To the left of the main aisle on the first section to the left. They were down approximately the third and fourth seats in a group there.

Q. Was testimony being presented at the time you came in?

A. I believe it was.

Q. What time was it when you came in?

A. Sometime in the afternoon early.

Q. What time do you call "early?"

A. I should say about 2:00 o'clock or so.

Q. Now when you went around to take your seat, you took a seat over in the left of the section you have told us about, did you not?

A. Yes.

Q. Didn't you go around the aisle that is at the top of the courtroom or rear of the courtroom?

A. That is the center aisle. That section splits right there. The main aisle runs into the body of the Court. That is a walk from right to left. That is correct.

Q. You mean you walked down the center aisle?

A. I did not. I walked into the main aisle and right here I decided to go to the left.

Q. "Right here." When you said "right here," you are indicating an opening immediately in front of the doorway in front of the main courtroom?

(552) A. At that aisle.

Q. There is an aisle that goes all the way around the rear of the courtroom?

A. Correct.

Q. As you walked around that aisle that goes all the way around the rear of the courtroom, is that when you observed these men sitting in that section?

A. No sir, it is not.

Q. When was it?

A. Just as I got to this section before turning to the left I observed these two boys here and I observed this group right here.

Q. You observed both groups almost simultaneously?

A. That and then that.

Q. Court was in session at that time?

A. Yes sir.

Q. Did you call that to the attention of the attorney who was representing your brother at that time?

A. No sir, I did not.

Q. Why didn't you?

A. I never met the attorney and I didn't realize the importance of the thing at that time. I was just —

Q. It impressed itself on your mind at that time?

A. It certainly did because I saw it before the trials.

Q. Where was the jury—the jury was in their seats at the time?

A. Yes sir.

Q. And were they observing the witness that was on the stand at the time?

A. I wouldn't know.

Q. Did you look to see?

(553). A. No, I didn't look to see whether they were observing the witness on the stand at the time.

Q. Didn't you look at the jury?

A. I don't remember looking at them, no.

Q. So you don't know where they were facing at that time, do you?

A. Well, their general sitting—you know—was facing across the room. Whether they were looking at the witness on the stand—just who they were looking at, I couldn't say.

Q. For how long a period of time did you notice this magazine?

A. The impact struck me the first time. I paid no more attention to it.

Q. You paid no more attention to it?

A. That is right.

Q. Did you just get a glance at it?

A. At what —

Q. The magazine itself.

A. No, I had a good look at it. That is the reason I stopped there and observed that.

Q. How long did you stop there?

A. For a minute or so.

Q. Now you say this group of about fifteen were about one-half way in the center section, is that correct—in the center section to the left in about the third and fourth seats down?

A. They were in a group right there.

Q. Were all the seats filled in the courtroom at that time?

A. The courtroom sections that were filled that I noticed later on on that day was through this section on the right, and the sections over here were partly filled to the left.

Q. Was this section filled at that time?

A. Not completely filled.

4554). Q. Weren't the people sitting in the seats that obscured your view?

A. No sir, they were not because I was looking down.

Q. Was the magazine opened at that time?

A. Yes, it was.

Q. And how was it being held?

A. One magazine, the first one, of the group that I noticed was opened to the pictures of the four boys and that is the matter they were referring to and pointing.

Q. Was it held flat in the person's lap or held up?

A. He was holding it more like this and they were all leaning over.

Q. The first one you referred to, you said there were only two boys?

A. I am speaking about the group.

Q. All right, the group; was it being held in somebody's lap?

A. It was being held up.

Q. Were the men in the row back of them looking over?

A. The man in the back row was the one who had the one that I noticed. After I noticed this group, these fellows here, they had their part opened to the picture and were pointing to the picture and the defendant.

Q. Let's get over to the group you are talking about. We are looking at that. Were there some looking over others shoulders to look at the magazine?

A. Well, they were in this group, you see —

Q. Were they all in the same row?

A. No, they were not.

Q. How many rows were they sitting in?

A. Two.

Q. And the one that had the magazine, was he in the front row, (555) that is the row —

A. I said there were a couple of magazines there.

Joseph Darcy--Re-cross

Q. You mean this group had more than one magazine?

A. Yes sir.

Q. How many?

A. Two to three.

Q. Can you say which it was, whether it was two or three?

A. I am just making an approximate estimate on it. I believe there were two to three magazines there.

Q. I beg your pardon?

A. I believe there were two to three magazines in that group.

Q. Did you actually see more than one magazine in that group?

A. Yes, I did.

Q. And in which row were the people seated that had those magazines?

A. In both rows.

Q. In both rows?

A. Yes.

Q. You observed all that as you first came into the courtroom?

A. That is right.

Q. And were all of these magazines that you saw being held down on the person's lap?

A. I said they were held up and that they were pointing to the picture, and this group were looking over each other

BY JUDGE MURPHY: As to the fifteen how were they divided? There were fifteen men looking at this magazine

BY THE WITNESS: I said approximately that amount.

Joseph Darcy - Re-cross.

BY JUDGE MURPHY: How many were looking at one magazine?

BY THE WITNESS: (556) Well, the group in the third seat down—whatever it was there—there were about five or six.

BY JUDGE MURPHY: They held that up where the Judge could see it?

BY THE WITNESS: It was being held up.

BY JUDGE MURPHY: It was high enough you could see there were people reading a magazine in the courtroom?

BY THE WITNESS: Yes sir; that is right.

BY JUDGE MURPHY: That is the first group of five. What about the others?

BY THE WITNESS: The others were grouped right with them.

BY JUDGE MURPHY: Right next was another group of five?

BY THE WITNESS: No sir.

BY JUDGE MURPHY: A group of how many?

BY THE WITNESS: They were in two rows.

BY JUDGE MURPHY: There were two boys first?

BY THE WITNESS: Yes sir.

Joseph Darcy--Re-cross

BY JUDGE MURPHY: You said there were two to three magazines besides that—two boys to the rear of the courtroom; you said there were fifteen and one group of five were looking at one magazine. (557). How many were looking at the other?

BY THE WITNESS: I said there were approximately fifteen. I didn't count them.

BY JUDGE MURPHY: The first two boys looking at one; the next five people looking at another; the balance looking at the third?

BY THE WITNESS: They were in the third and fourth seats.

BY JUDGE MURPHY: The two groups were holding them up so that it would be apparent they were reading magazines in the courtroom?

BY THE WITNESS: They were holding them up in that position.

BY JUDGE MURPHY: All right.

BY MR. VAN ARTSDALEN:

Q. Was any objection raised by counsel for your brother at that time?

A. I didn't notice any.

Q. Do you know whether he observed this condition?

A. I don't know that he was aware the magazines were on the stand or anything. I never met Mr. Achey.

Q. Now you have testified you were present when the verdict came in—correct?

A. Correct.

Q. What time of day was it when the verdict came in?

A. In the afternoon sometime.

Q. Around 4:30?

A. I would say in around that vicinity.

(558) Q. The jury were polled, were they not, after the verdict was rendered?

A. That is correct; yes sir.

Q. Was there any applause at the time the verdict was rendered?

A. No, I didn't hear any applause.

Q. Were there any outbursts at the time the verdict was rendered?

A. I don't recall any outbursts.

Q. Any display of any sort at that time when the verdict itself was rendered?

A. At that time when the verdict itself was rendered —

Q. Yes.

A. I don't recall any.

Q. So that it wasn't until after the jury was discharged by the Court that you saw them mingle with the spectators?

A. They left their places and came up.

Q. It was after the Court had dismissed them, is that correct?

A. Yes.

Q. Were the magazines held in such a position that the Judge trying the case could see these magazines?

A. I would say he could see them. His bench was high. He was looking straight ahead.

Q. Did he make any remarks about any magazines?

A. I heard no remarks whatever about the magazines.

Q. Did you see the magazines at any time after that session of the Court?

Joseph Dacey - Re-cross

A. I never looked for them again. I didn't even realize the impact or what it might cause at that time.

Q. But it made an impression on you at that time?

A. Certainly because I was aware of it being on the newsstands prior to the trials.

(559) Q. On this one exhibit, "Exhibit No. 112," you have mentioned—you identified Foster and Zietz; how do you know they are Foster and Zietz?

A. I knew Foster before I went in the Navy. He is from the same neighborhood.

Q. How about Zietz?

A. Zietz—I met him casually, I think, on one occasion when he came to our home.

BY JUDGE MURPHY: I am going to suggest for appellate purposes and for this Court that something be placed with that tape. Instead of them straining their eyes looking for that exposure, somebody ought to mark somewhere where this witness sees these defendants.

BY MR. VAN ARTSDALEN:

Q. On this "Exhibit No. 112," do you know how long this film is?

A. No, I do not.

Q. All right; can you show us where on this roll of film these pictures start that you have referred to?

A. Where they start —

Q. Yes sir.

BY JUDGE MURPHY: I am talking about the Appellate Court. I presume no matter how we decide it, one way or the other, it will go up.

BY THE WITNESS:

A. Here's the picture right there

BY MR. VAN ARTSDALEN:

Q. Now that is approximately—would you say approximately seven feet from ~~the~~ beginning of the film?

(560) A. I would say more like six feet.

Q. More like six feet. About how far is it from the place where the film apparently contains pictures?

A. Three feet.

BY JUDGE MURPHY: Isn't it possible to inquire from a local photographer, anyone who would know those figures, or Comerford? They have a little clip they put over that portion that won't destroy the film. If you just have him point it out, the Court officer will see that there is a little clip put on that will designate that place.

BY MR. VAN ARTSDALEN:

Q. From that point on will you tell us how many feet of film contain these pictures of these three men that you have identified?

BY JUDGE MURPHY: It looks like a 16 millimeter, doesn't it?

BY MR. VAN ARTSDALEN: I believe so.

BY THE WITNESS:

A. Some of these pictures here there is one boy's head is out. Would you like the point

Joseph Darcy - Re-cross

BY MR. VAN ARTSDALEN:

Q. How many feet—can you give us how many feet of film there is that shows any of those three persons that you have identified?

A. I would like you to observe one here. It shows just one-half the face like. The last picture that I could identify clearly runs about that point.

Q. Do we have a clip? About how many feet of film is that?

(561) A. What?

Q. From the point where the first picture of these men appears to the point where you have just pointed out.

A. That is approximately four to five feet.

Q. And do you know of your own knowledge how long it takes to show four to five feet of this film?

A. No, I do not.

Q. Now have you examined the rest of this film?

A. No sir, I did not.

Q. Well, will you go ahead and complete the examination and see if there is any other portion that exhibits the three of them?

A. Let's see—this is the beginning —

Q. This is the last point that you have identified:

A. That I have identified—all right. You see this picture right here. It starts off with one person and it just shows one-half of them and it goes into two parties. Those parties —

BY MR. MARGIOTTI: Are those parties the defendants?

BY THE WITNESS: Yes sir, they are.

Here I see the police officers here at this point, at the break in the film.

BY MR. VAN ARTSDALEN: May we have another clip, please?

BY MR. MARGIOTTI: What is that mark?

BY MR. VAN ARTSDALEN:

Q. You are putting a clip at that place where there is a break in the film?

A. That is right.

BY MR. MARGIOTTI: (562) What?

BY THE WITNESS: Where the film has been ended and is cut and sealed attaching to the other.

The rest of the pictures here look to me like they are police officers.

BY MR. VAN ARTSDALEN:

Q. You go ahead and examine the rest of the film and see if you find any other pictures on that film.

A. Yes.

BY JUDGE MURPHY: For the record, Mr. George A. Koehler, the ninth witness called, testified, as we recall it, that on December 23, 1947 the pictures in question appeared on the screen on a silent film for fifteen to twenty seconds.

BY THE WITNESS: It ends here with the police officers and I see the former Mayor of Philadelphia, Samuel.

BY MR. VAN ARTSDALEN:

Q. What do you mean "it ends here?"

Joseph Dwyer: Re-cross

A. There is a break.

Q. Are there any pictures of any of these three men that you have identified from the last clip?

A. No —

BY MR. MARGIOTTI: I object to going over the balance of that film as being unimportant.

BY JUDGE MURPHY: You have offered it all in evidence. I suppose that is why he is doing that—to save the eyes of the Judge, I hope.

BY MR. MARGIOTTI (563): I am satisfied if he wants to go into it.

BY JUDGE MURPHY: Like many other things, it is something that could be done out of Court.

BY MR. MARGIOTTI: What is that?

BY JUDGE MURPHY: I say like a good many other things, it is something that could be done out of Court and come in here with an answer.

BY MR. VAN ARTSDALEN: If the Court please, I believe that the Court stated its recollection of Mr. Koehler's testimony that the film lasted —

BY JUDGE MURPHY: Fifteen-to twenty seconds. He says that the performance on the film—that occurred on the first night—let's see—as we recall it —

BY MR. VAN ARTSDALEN: Yes.

BY JUDGE MURPHY: He says "Exhibit No. 12" ap-

peared on 12-23-47; that "Exhibit No. 113" appeared on 1-21-48; that "No. 412" ran for fifteen to twenty seconds; that "No. 113" ran for one and one-half to two minutes. So that what we have here is a fifteen to twenty second showing, as we understand it, the night after the killing.

BY MR. VAN ARTSDALEN: That is as we understand it.

BY JUDGE MURPHY: So far we have spent about one-half hour on that. (564) Did you find any more pictures of those three men that you have identified except as to what you put clips on?

BY THE WITNESS: No sir, Your Honor.

BY JUDGE MURPHY: You have not?

BY THE WITNESS: No sir. The rest appears to be a presentation of medals or something.

BY JUDGE MURPHY: In other words, out of this entire film there is approximately eight feet that has any —

BY THE WITNESS: I will have to check it.

BY MR. PANNELL: You referred to this "No. 112" under date of December, 1947. These labels were loose and we placed them back. Apparently we interchanged "No. 112" and "No. 113." I find in this one here ~~the~~ date of January 21, 1948.

BY JUDGE MURPHY: I will not take it on your say-so. I will take it by what is in the record.

Joseph Darcy—Re-cross.

That has any reference to the three men that you have identified?

BY THE WITNESS: It appears to me the entire film has reference to the three men.

BY JUDGE MURPHY: Pictures of them?

BY THE WITNESS: Pictures of the three men. It looks like about eight to ten feet.

(565) BY JUDGE MURPHY: This is a picture of the three, 12-23-47; it would be more likely to be newsworthy than than 1-21-48 on television.

BY MR. PANNELL: Apparently these labels were placed in all right this afternoon with the identification—there is no question—when this was first identified.

BY JUDGE MURPHY: Are you saying now that there was no picture on television at the time of the occurrence; it didn't occur until 1-21-48?

BY MR. PANNELL: It is my recollection of Mr. Koehler's testimony that this one exhibit appeared on 1-21-48 and the other was December.

BY JUDGE MURPHY: Mr. Margiotti has withdrawn one. Which do you desire to withdraw? You make up your mind; it is your choice; and it isn't —

BY MR. VAN ARTSDALEN: We have no further questions of this witness.

Joseph Darcy--Re-cross

BY MR. PANNELL: We desire to withdraw the one which appeared on December 23, 1947.

BY JUDGE MURPHY: You are now saying--do you-- that this picture that has the three boys was not at the time of the killing at all but on January 21, 1948?

BY MR. PANNELL: That is when it appeared.

BY JUDGE MURPHY: That is contrary to the testimony. That is where the (566) record stands. We will take the sworn testimony. At least, this Court can follow its own record. It all boils down to, Judge Pannell, as to whether or not it took fifteen to twenty seconds or one and one-half to two minutes.

BY JUDGE PANNELL: It is the film--one film contains pictures of this Relator and the other doesn't. The one that has no reference to anything in this case Mr. Margiotti withdrew. Unfortunately it wasn't identified, when the labels were put on with the identification as to any difference as to date.

BY JUDGE MURPHY: We will take any sworn testimony.

BY MR. MARGIOTTI: I take the position the film that had a picture of Darcy was the one we introduced.

BY JUDGE MURPHY: Is it not a difference of whether or not it took fifteen to twenty seconds or one and one-half to two minutes? What other difference is there?

BY MR. MARGIOTTI: There may be some difference.

Inez Darcy Heckman—Direct

I only knew of one picture that had a picture of Darcy and that film I adopt.

BY JUDGE MURPHY: You have offered the film in evidence with Darcy on it.

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: What you are disputing, as I understand the English language, is whether it took fifteen to twenty seconds or one and one-half to two minutes.

(567) BY MR. MARGIOTTI: I don't have any dispute.

BY JUDGE MURPHY: If you don't, let's get on. The Court is clear.

BY MR. MARGIOTTI: I don't think it makes any difference.

That is all.

(Witness excused.)

MRS. INEZ DARCY HECKMAN, called and sworn on behalf of the Relator, on direct and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mrs. Heckman, are you related to the Relator in this case?

A. Yes, I am.

Q. In what way?

A. I am his sister.

Q. At the time of the Feasterville killing and at the time of the trial of your brother were you married or single?

A. I was single.

Q. Where were you staying?

A. I was staying at our home on Larch Street in Philadelphia.

Q. Will you tell me whether or not you went to Doylestown prior to the trial?

A. Yes, I did.

Q. Will you tell me about when you went the first time?

A. The first time was when we were allowed to visit him when he had been moved to Bucks County Prison.

Q. What is that?

A. The first time was when we were allowed to visit him when he had been moved to Bucks County Prison. From then on we made (568) regular visits every week.

Q. Do you remember what month it was—January, February or March?

A. January.

Q. Well then, did you go to see him in January?

A. Yes.

Q. Now when you went to see him did you have occasion to hear people talking about your brother and others involved in the killing at Feasterville?

A. Yes, I did.

Q. And where was that?

A. It was at the Doylestown Inn.

Q. The Doylestown Inn. And whom did you hear discussing it?

A. A group of men at the booth next to mine.

Q. By "booth," what do you mean?

Inez Darcy Heckman - Direct

A. I was in the lunch room. As you came into the front door of the Doylestown Inn —

Q. You mean a lunch booth?

A. Yes. —there was a counter and a booth ran parallel with the counter.

Q. What did you hear them say?

BY MR. VAN ARTSDALEN: I object to any conversation.

BY JUDGE MURPHY: We will take it subject to the objection.

BY THE WITNESS:

A. The conversation concerned "the indictment of the Feasterville killers," and the remarks that the men—the gist of the conversation was to the effect that "they shouldn't go to all that bother; that they didn't deserve a—that they don't deserve a trial."

(569) Q. They shouldn't go to what bother?

A. To the indictment. They were referring to the indictment —

Q. Yes.

A. —and that "they shouldn't go to all that bother; that they shouldn't have a trial."

Q. Did you hear any other conversations at a later time strike that. Do you remember who the men were?

A. No, I do not.

Q. Were they strangers to you?

A. Yes, they were.

Q. Now, did you in that Doylestown Inn again hear any further conversation?

A. Yes, I did.

Q. When was that?

A. That was in the warm weather, and from the conversation I recall that it was prior to the trial.

Q. Prior to the trial?

A. Yes.

Q. And what did you hear at that time?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: We will take the entire testimony subject to the objection.

BY MR. MARGIOTTI:

Q. What did you hear on that occasion?

A. The reference was made that "the trial was coming up and that the boys—they should be strung up."

Q. Who said that?

A. Another group.

Q. Another group?

(570) A. Yes.

Q. How many were in the group?

A. Well, I couldn't be precise or accurate on it. I would judge six.

Q. Did you know any of the persons in the group?

A. One man was familiar to me.

Q. Did you know his name?

A. No, but I believe I saw the man in the courtroom at the time of the trial, this one man.

Q. What was he doing in the courtroom?

A. Just a spectator.

Q. I see. Now, did you attend the Foster-Zietz trials?

A. I attended one session of the Foster-Zietz trial.

Q. Do you remember what session that was?

In re Darcy Heckman—Direct

A. I believe it was the Saturday morning session; whenever that was, I am not sure.

Q. And do you recall anything about persons attending that trial, where they were and how many there were and anything like that?

A. Do you mean as to the number in the courtroom?

Q. No—if there were any number—yes.

A. No, I really couldn't say.

Q. Now on the occasion of your brother's trial did you attend it?

A. Yes, I did.

Q. Now, will you state whether or not you had occasion on any particular day to observe the nature of the crowd, that is whether it was large or small or medium, or what it was?

A. Well, my general statement on that would be that I can not recall anything less than a large crowd.

Q. Did you hear any conversations while your brother was being (571) tried by women or men?

A. Well, the only occasion that I do recall while my brother's trial was in progress was an afternoon I returned to the courtroom early after lunch and there were so many people in this corridor leading to the courtroom that I was afraid that I was going to faint so I stepped into a room, the door was opened, to the left of the courtroom door; so far as I can remember; it was to the left and close to the courtroom door; and in that instant when I stepped into the room there was a girl working in there and an older man and they were talking and I overheard their conversation. The young girl said to the man, "Well, he doesn't stand a chance either." And the man said, "Well, he's going to get it too."

Q. Now, did you see this magazine that I had in my hand?

A. Yes, I did.

Q. Which Mr. Ryder is now handing up—did you see a magazine like this in that courtroom at any time while your brother was being tried?

A. Yes, I did.

Q. Will you tell the Court how many times and where you saw it and the circumstances under which you saw it?

A. Well, the one specific occasion that I remember —

Q. That is a magazine. I am referring particularly to "Relator's Exhibit No. 136."

A. —this afternoon session I rushed from lunch and I came into the courtroom and turned left to go to the seat that I generally took and as I was going down the steps I noticed this magazine to my right and I immediately recognized it as the magazine that (572) we had already read; we had had a copy of it and I had read it at home.

Q. Where did you see it?

A. On which occasion—when?

Q. When you first saw it in the courtroom where did you see it?

A. To my right.

Q. In the hand or on a head, shoulder, in a pocket, or what?

A. It was on the lap.

Q. It was on the lap of a woman or man?

A. I couldn't tell you that.

Q. Well, who?

A. Beg your pardon?

Q. Was it the lap of a man or woman?

A. I couldn't tell you that.

Q. Just a person?

A. Just a person, that was just my impression.

Q. How many copies of this magazine did you see in this courtroom?

A. I couldn't be specific but there were a great number.

Inez Darcy Heckman—Direct

Q. What do you mean by "a great number?"

A. Well, after I noticed the copies were to my right and I went down and took my place in the first row to my left I looked around then to take particular note if there were other magazines there —

Q. Of the same kind?

A. Yes. —and I looked over to the left and the spectators on the left and I recognized the front page.

Q. Well altogether about how many would you say you saw?

A. I couldn't say.

BY JUDGE MURPHY: Was it 500 or was it 2?

BY THE WITNESS: (573) No, I wouldn't say there was two. They were just the limited areas that I was able to observe.

BY JUDGE MURPHY: What is your best judgment as to how many you say you saw?

BY THE WITNESS: Perhaps fifteen.

BY JUDGE MURPHY: Fifteen of them all around you, is that it?

BY THE WITNESS: Yes, and to my left.

BY MR. MARGIOTTI:

Q. Now, how many sessions of the Darcy trial did you attend?

A. I attended the Wednesday morning, Wednesday afternoon, Thursday morning, Thursday afternoon, Friday

morning, Friday afternoon, Friday evening, Saturday morning, Monday morning, Monday afternoon.

Q. And will you state whether or not you got to know who Judge Boyer was?

A. Yes.

Q. And when you attended these sessions did you see Judge Boyer?

A. Yes.

Q. Where did you see him?

A. I saw him on the bench and I saw him as a spectator on two occasions.

Q. On two occasions as a spectator?

A. Yes sir.

Q. And how many times would you say you saw him on the bench?

A. I couldn't say definitely.

Q. Did you observe what he was doing on the bench?

(574) A. Well, he was talking with Judge Keller. I mean they would lean over and talk with each other.

Q. Do you remember the occasions that brought about the talk between the Judges?

A. No, I do not.

Q. Now then, you say you saw him on two occasions as a spectator?

A. Yes.

Q. Where was he on those two occasions?

A. He was sitting in the chairs around the semicircle.

Q. Where were these chairs?

A. They were in front of the railing that separated the spectators from the jury.

Q. Where did you usually sit?

A. I generally sat in the first row, the first aisle to the left from the center.

Q. And when you saw Judge Boyer how far would he be away from you?

Inez Darcy Heckman—Direct

A. I would say about ten to twenty feet. I am not very accurate.

Q. Can you point to anything in this courtroom which would indicate the distance?

A. I am trying to recall it. Oh, perhaps an angle from here to the last juror's seat there.

Q. I didn't get the answer.

A. On an angle from myself over to the last juror's seat. He was, of course, lower than that.

BY MR. MARGIOTTI: Can we agree what that distance is—twenty or twenty-five feet?

BY JUDGE MURPHY: Have the distance measured from the seat where the witness occupies to Chair No. 12 in the jury box diagonally so we will be precise. We will do it during recess.

BY MR. MARGIOTTI:

Q. Did you see Mr. Biester, the District Attorney?

A. Yes, I did.

Q. Where did you see him?

A. Generally I saw him at the bench and interviewing the witnesses.

Q. And will you state whether or not at any time when you saw Judge Boyer whether there was any other person or persons seated near him?

A. Yes, I saw Mr. Biester with him the one occasion.

Q. Did you yourself ever see anything unusual happen between Mr. Biester and Judge Boyer?

A. No, I did not.

BY MR. MARGIOTTI: You may cross-examine.

Inez Darcy Heckman-Cross

BY JUDGE MURPHY: We will give the Reporter and the others a ten-minute recess.

(Recess.)

(Court resumes after the recess with all parties, including the Relator, David Darcy, present in Court.)

MRS. INEZ DARCY HECKMAN, recalled.

BY MR. VAN ARTSDALEN: During the recess we measured from the witness' chair to the twelfth juror's chair and we found it to be twenty feet.

BY MR. MARGIOTTI: I don't think I will object to the qualifications of the District Attorney.

BY JUDGE MURPHY: Can you stipulate?

(576) BY MR. MARGIOTTI: I will agree to it and I won't object to it.

CROSS-EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. I don't believe you were asked how old you are. How old are you?

A. Twenty-five.

Q. Where do you live at the present time?

A. I am living at home on Larch Street with mother.

Q. Do you remember when was the first day you came up to visit your brother at the Bucks County Prison?

Inez Darcy Heckman—Cross

A. No, I don't.

Q. You testified, I believe, the first conversation that you overheard took place in the Doylestown Inn; is that correct?

A. That is right.

Q. And can you give us some time when that took place, please?

A. Well, only from the conversation and remembering that they were talking about the indictment.

Q. About the indictment?

A. Yes.

Q. If I tell you that the record indicates that the indictment was found on February 10, 1948, would that refresh your recollection in any way in reference to this conversation?

A. Well, it would just substantiate my own thinking that it was in the winter and it was while David was in the Bucks County Prison.

Q. Was it before or after February 10, 1948?

A. I couldn't say.

Q. In other words, you don't know whether it was before or after the indictment was found, is that correct?

A. Just from the conversation which I repeated to you, testified (577) to.

Q. Well now, the conversation, as I have it in my notes, there was something said about the Feasterville affair and that "the boys should be strung up?"

A. No. That was a later conversation.

Q. All right; what was this first conversation, please?

A. The first conversation was about "the Feasterville killers, they had been —

Q. What was said?

BY MR. MARGIOTTI: Let her answer the question.

BY MR. VAN ARTSDALEN:

Q. Go ahead.

A. The first conversation that I overheard was about "the Feasterville killers, they had been indicted and that they didn't understand why they went to all that trouble, that they didn't deserve a trial."

Q. Well, it was then after the indictment was found?

A. Apparently.

Q. What did they say about "the Feasterville killers"? How do you know they were referring to that case?

A. They said that they were.

Q. You heard the words "the Feasterville killers?"

A. Yes sir.

Q. That was in the booth next to where you were sitting?

A. That is right.

Q. You don't know who any of those persons were?

A. Not at that time, no.

Q. Did you subsequently identify any of those persons?

A. No.

(578) Q. Was anybody with you at that time?

A. I can't recall.

Q. You mean you don't recall whether you were all alone or with somebody else?

A. I don't recall whether I was all alone or with somebody else. Generally the family—they kept together.

Q. You don't recall about this occasion?

A. I can't say who was with me.

Q. You can't give us any closer point of time than you have already given?

A. No, I can't.

Q. This second conversation, can you give us any closer point of time than it was warm weather —

BY JUDGE MURPHY: Do I understand you to say now

Inez Darcy Heckman-Cross

you were not permitted to see your brother from December 22 until February?

BY THE WITNESS: No, Judge; we were allowed to see him.

BY JUDGE MURPHY: I understood you to say this was the first time you were allowed to visit your brother this occurred?

BY THE WITNESS: I said the first conversation I overheard was sometime between the time that David was first brought up to the Bucks County Prison and the point I overheard the conversation, because I visited every Saturday at Doylestown starting approximately January.

BY JUDGE MURPHY: Go ahead.

BY MR. VAN ARTSDALEN:

Q. This conversation you heard the second time, that was also in (579) the Doylestown Inn?

A. That is right.

Q. Was it at noon-time?

A. Yes, we were having lunch, as I recall.

Q. All right. Are you sure it was noon-time or not?

A. Whether it was precisely noon-time, I can't say.

Q. How do you know they were talking about this particular case? What was said that makes you come to that conclusion?

A. Well, the reference to "Feasterville."

Q. What was the reference to "Feasterville?" You mean that is what you heard, the word "Feasterville?"

A. "The Feasterville killers are going on trial."

Q. You are sure they used the term "Feasterville killers?"

A. That is what drew my attention.

Q. It was the same term you used the first time you overheard any conversation?

A. Yes.

Q. You say there were about six persons there; were they sitting eating somewhere?

A. I would say that there were two standing and four seated.

Q. Was this in the dining-room?

A. No.

Q. In the grill?

A. Yes.

Q. Were you at a booth?

A. Yes.

Q. Were these men seated, the ones that were seated, or at the bar?

A. There were two that were standing at the table and four sitting in the booth.

Q. How long did that conversation take place that you overheard?

A. Well, I couldn't say.

(580) Q. Can you give us any idea?

A. No, I can't.

Q. Was it more than just a very few short seconds such as you have related?

A. Yes, it was just a general conversation and rehash of the incident.

Q. Now you say you heard someone say "The boys should be strung up." Did they specify any particular one?

A. No.

Q. Did more than one person say that?

A. Just general conversation.

Q. Now the one session you attended of the Foster-Zietz trial, was on Saturday morning?

Inez Darcy Heckman-Cross

A. As I recall, yes.

Q. You don't know how many persons were present?

A. No, I can't say.

Q. Now, if I understood your testimony, you attended your brother's trial from Wednesday morning every session thereafter, is that correct?

A. That is correct.

Q. And where did you sit on those occasions?

A. The first aisle to the left from the center aisle down, in the ~~first~~ row.

Q. Did you attend any of the sessions with any of your relatives?

A. Generally, yes.

Q. Which ones of your relatives?

A. My sister Rita, my sister Jean, and I generally stayed together.

Q. Did you see your aunt there on any occasions?

A. Yes.

Q. Did you sit with her on any occasions?

(581) A. I can't say.

Q. You mean you are not sure?

A. I wouldn't want to testify that I did or I didn't.

Q. Did you sit with your brother, Mr. Darcy, on any occasions—Joseph?

A. The same would apply to him.

Q. You mean you are not sure whether you sat with him on any occasions, is that right?

A. No, I wouldn't say I am not sure.

Q. Do you think you did or did not sit with him on any occasion?

A. I would say that I did not.

Q. You did not. Did you see him there at the trial?

A. Yes.

Q. Did you talk to him at the trial?

A. Yes.

Q. Do you know what sessions or how many sessions you saw him there?

A. No, I don't.

Q. Now, Mrs. Heckman, the first day that you came in was on Wednesday; as I understand it, that is the time you testified you almost fainted; is that correct?

A. No, I don't think I specified.

Q. What day was that?

A. I can't be specific as to the day.

Q. You mean you don't know?

A. I would say I don't know which day it was.

Q. So that you don't know which day it was you heard this conversation in one of the rooms off the main court room, is that correct?

A. That is correct.

(582) Q. And the only conversation that you overheard — am I right — is that "He doesn't stand a chance either." "He's going to get it too." Is that correct?

A. That is right.

Q. You don't know to whom they were referring, do you? Was any name mentioned?

A. Well, the murder trial.

Q. What was said in their conversation?

A. This young girl and this man were talking about the murder trial and referred to the crowd in the corridor.

Q. What precise words did you hear?

A. I quoted the precise words.

Q. Did you hear anything else besides that?

A. Other than the reference to the murder trial —

Q. What was the reference that was made?

A. Well, about the crowd the first thing, the crowd in the corridor.

Q. Isn't it a fact, Mrs. Heckman, that the words "He

Inez Darcy Heckman-Cross

doesn't stand a chance either. "He's going to get it too," you did not know whether they were referring to Darcy or to someone else in the Feasterville Inn hold-up, or if they were referring to an entirely different situation or case?

A. I wouldn't say they were referring to an entirely different situation or case. I understood it was in reference to the trial that was going on.

Q. Now, what session was it when you saw these fifteen magazines in Court?

A. I can't be specific. It was an afternoon session.

Q. Was it the first afternoon?

A. I said I can't be specific.

(583) Q. In other words, you can't tell at all—give us any idea other than it was one of the afternoon sessions that you attended?

A. That is right.

Q. Was it the same afternoon that you fainted?

A. That I can't recall. I didn't faint. I said I felt faint.

Q. That you felt that you were going to faint—excuse me?

A. Yes.

Q. Now at the time you came in when you saw those magazines, was Court in session at that time?

A. No, not at the time I came in.

Q. It was before Court was in session?

A. Yes.

Q. Was the jury in its box?

A. That I can't recall.

Q. Do you know whether the Judges were on the bench—or either of the Judges?

A. No, I don't recall.

Q. Now then, I believe that you stated that you took particular note of these magazines, is that right?

A. That is right.

Q. And you had seen these magazines before, is that correct?

A. That is correct.

Q. Where had you seen them before?

A. At home.

Q. How did it come about you had one of these magazines at home?

A. Because my brother Joseph has already testified we found out about this magazine and we purchased copies of it and we read it at home.

Q. So that you discussed the article in that magazine prior to (584) coming to Doylestown for the trial, is that right?

A. That is right.

Q. Did you call the fact you had read this article to the attention of the attorney for your brother?

A. No, I didn't know the attorney.

Q. Did you tell your brother, the defendant—the Relator here—about it?

A. No, I did not.

Q. Did you ever tell him about seeing these magazines in Court?

A. Tell whom —

Q. Your brother, the Relator.

A. No sir, I did not.

Q. You never told his counsel about it, is that correct?

A. I didn't know his counsel. His counsel didn't confer with us.

Q. Did you call it to the attention of anyone else—the fact these magazines were in the courtroom?

A. We discussed it.

Q. Among the family. Did you call it to the attention of any single outsider at that time?

A. Not that I recall.

BY JUDGE MURPHY: I understand you and your brother said you didn't even speak to the attorney. Do you have any idea who hired him?

BY THE WITNESS: My father.

BY JUDGE MURPHY: Your father.

Did your father talk with him, to your knowledge?

BY THE WITNESS: (585) On very few occasions.

BY JUDGE MURPHY: Were they on speaking terms, your father and the lawyer he hired?

BY THE WITNESS: Not very good speaking terms, I wouldn't say.

BY JUDGE MURPHY: Even before the trial?

BY THE WITNESS: That is right.

BY MR. MARGIOTTI: What is that?

BY JUDGE MURPHY: She said "That is right." They weren't on speaking terms, her father and the lawyer.

BY THE WITNESS: I didn't say that, Judge.

BY MR. VAN ARTSDALEN:

Q. When you discussed it with your family how long after this incident was it?

A. That the family discussed it —

Q. Yes m'am.

A. That was immediately after the verdict was rendered and we were talking about the whole trial.

Q. After the verdict. Was your aunt present at that time—Miss Ford?

A. I do not know.

Q. You don't recall?

A. I don't recall.

Q. Who was present?

(586) A. I couldn't say. Just the family, so far as I am concerned.

Q. Just members of your family, no one else. Now, to your knowledge, when was the first time the incident about the magazines was first reported to anyone outside the family?

A. I am not in a position to say. I don't know.

Q. Did you report it to anyone outside the family prior to this hearing today?

A. No—to Mr. Margiotti.

Q. You did discuss it with Mr. Margiotti, of course?

A. Yes.

Q. And when was the first time you discussed it with him?

A. I couldn't say.

Q. To the best of your recollection?

A. A few days ago, I suppose.

Q. A few days ago?

A. Yes.

Q. Do you know whether—do you know how Mr. Achey was employed in this case?

A. He was referred by two of his co-workers in Common Pleas Court No. 6, Philadelphia, to Mr. Achey in Doylestown.

BY MR. MARGIOTTI: Who was?

Inez Darcy Heckman—Cross

BY THE WITNESS: Daddy:

BY JUDGE MURPHY: Her father was, which is obviously hearsay. We will take it. It is being given—you proved it before and they are proving it again. At least, this is the second time it is in—yes, that the father, who is not here, engaged Mr. Achey because (587) of some recommendation by two other gentlemen —

BY MR. MARGIOTTI: In Philadelphia.

BY MR. VAN ARTSDALEN:

Q. You saw Judge Boyer, I think you said, on the bench with Judge Keller at various times when the case was being tried, is that correct?

A. That is correct, sir.

Q. Was any objection raised at any time by Mr. Achey, that you know of, to Judge Boyer being on the bench?

A. Just on the one occasion that is in the testimony. I recall no other.

Q. Did you hear what was said at that time Mr. Achey raised that objection?

A. No, I didn't.

BY MR. VAN ARTSDALEN: That is all.

BY MR. MARGIOTTI: That is all.

(Witness excused.)

BY JUDGE MURPHY: Yesterday about adjournment time we inquired of counsel for the Relator. He said then he thought he would be finished at noon today. We make

Discussion

the same inquiry because we have had to continue pretrials three days. We want to know about the time. Can you give us some idea how long your side will take? The morning paper says twelve days.

BY MR. MARGIOTTI: My opinion is we are through now except for this, I would like to check on our various matters overnight. If there (588) is anything left I would like to introduce it in the morning. I don't think there is. I would like to check those at the hotel. There is a dispute between Mr. Pannell and myself on these films.

BY JUDGE MURPHY: I understood you to say you had ten witnesses —

BY MR. MARGIOTTI: I am inclined to believe if we come in in the morning —

BY JUDGE MURPHY: Will Rogers said "I know more than I read in the newspapers."

You said you would take about ten witnesses—the other side. Is that your best estimate?

BY MR. VAN ARTSDALEN: That is my best estimate, and on direct-examination I would not anticipate any of the witnesses would take more than three-quarters of an hour to an hour. How long on cross-examination, I don't know.

BY MR. MARGIOTTI: These two films, there is only one way we can settle the dispute, Judge Pannell and myself, and that is to examine them. If the Court will permit us to do it at the hotel rather than here—if the Court will permit it —

Discussion

BY JUDGE MURPHY: Those exhibits better remain in the custody of the Court because of the confusion that is there.

BY MR. MARGIOTTI: I don't know now which is which.

BY JUDGE MURPHY: I don't either. But there are three films now.

(589) BY MR. MARGIOTTI: No; there are only two.

BY JUDGE MURPHY: There are two boxes.

BY MR. MARGIOTTI: There are two boxes, one film. That film goes in the box. There is a little yellow paper that goes with that. There it is. That film goes in there.

BY JUDGE MURPHY: What we will do—why can't you arrange with someone on your side and someone on the other side to just step into Mr. Prestwood's or a half dozen other places in town—better yet, Tony Sandone's place right under the Scranton Tribune, and they will snap them on and you will see the picture run through in a second and you won't have much trouble? You send a representative and Mr. Margiotti will send a representative and come in and tell us what you saw.

BY MR. MARGIOTTI: That is a good suggestion. I would like to do it.

BY JUDGE MURPHY: Mr. Foley, are you going to be busy with the prisoner?

BY MR. FOLEY: Not once I leave the Court.

BY JUDGE MURPHY: You take the films up and see that they are seen by both sides and then return them to the Court Reporter, and then you will know where to go.

(Court adjourns for the day at 4:03 P. M.)

(Court resumes on Thursday, March 18, 1954 at 10:00 A. M. with all parties, including the Relator, David Darcy, present in Court.)

(590) BY MR. MARGIOTTI: Following the suggestion made by the Court last evening, we had these films run and I wasn't there, I had a representative there. Mr. Lawley was there. I am satisfied with his reporting to the Court the facts as they actually were.

BY MR. LAWLEY: We observed the shorter of the two films, which is in two pieces. They show two police officers and they ran a total of $36\frac{1}{2}$ seconds, the first piece running 5 seconds, the second piece running $31\frac{1}{2}$ seconds, at silent speed on an Ampro Compact Sound Projector, 16 millimeter, which was operated by Joseph Sandone of the Scranton Photo Shop.

Now the longer film, which is the one marked with the clips attached, is in one piece and was run with the same equipment and by the same operator, and it shows four boys, including David Darcy, who were on the screen for fifteen seconds. David Darcy appeared on the screen for ten seconds, and the entire film runs four minutes and nine seconds. The remaining portion of the film shows there is a sign that four received hero awards. The rest of the film is the presentation of those awards somewhere in City Hall to policemen.

BY MR. MARGIOTTI: I think we had the right film

Discussion

introduced. The question that arises is whether we had the proper identification slip—or not.

BY JUDGE MURPHY: On one, the so-called short film, there are so-called police officers. Did they have anything to do with this case?

BY MR. MARGIOTTI: (591) Whether they had or not, we will withdraw that. I don't think it has any material bearing on the case.

BY JUDGE MURPHY: The question is there is a film, whatever film it is, we will take it as the first of the two numbers, "No. 112," and you withdraw "No. 113," is that it?

BY MR. MARGIOTTI: If that is the correct designation. These slips are off. They came off naturally.

BY JUDGE MURPHY: Well, at any rate, we will consider then that one of the films is withdrawn. You withdraw that?

BY MR. MARGIOTTI: Yes sir.

BY JUDGE MURPHY: We will consider the other as the two numbers. Then there is no problem.

BY MR. MARGIOTTI: Taken as shown January 21, 1948.

BY JUDGE MURPHY: How do you know that?

BY MR. MARGIOTTI: There is a yellow slip, Judge, in the container, and the witness who appeared said that designated the date it was shown and he had so marked it.

BY JUDGE MURPHY: That is certainly a confusing circumstance. You have now pictures of boys, you have it shown three or four weeks (592) after in connection with the other and not contemporaneous with the killing itself.

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: As to whether or not we will agree to that, you can put whatever you want on the record on that circumstance.

BY MR. MARGIOTTI: I will put the yellow slip in as the witness produced it and put the film back in the container.

BY JUDGE MURPHY: There is nothing in this record, so far as the Court can recall, about any yellow slip.

BY MR. MARGIOTTI: Yes, there is. The witness testified about it.

BY JUDGE MURPHY: We don't recall it. We will see the record.

Is the Commonwealth stipulating that these pictures were not run on December 23, 1947, but on the contrary were run January 21, 1948?

BY MR. LAWLEY: We believe the evidence of Mr. Koehler would speak for itself, Your Honor. I don't believe we will stipulate as to that.

BY MR. MARGIOTTI: We will stand by the record.

BY JUDGE MURPHY: All right.

Miss Margaret C. Gordon—Direct

BY MR. MARGIOTTI: Now, Your Honor, I told you last evening we would probably close early this morning. I have just one more witness (593) and then we will be through.

MISS MARGARET C. GORDON, called and sworn on behalf of the Relator, on direct and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Miss Gordon, where do you live?

A. Philadelphia.

Q. What is your address?

A. 5025 Frankford Avenue.

Q. What is your business?

A. Real estate and insurance.

Q. I want you to state whether you are related to Mr. Darcy, the Relator in this case.

A. No, I am not, sir.

Q. And I want you to state whether you attended the Darcy trial.

A. I attended some of the sessions, yes sir.

Q. And with whom did you attend the trial?

A. On some occasions I attended the trial with members of the Darcy family and with Miss Ford, the aunt.

Q. Miss Ford?

A. Miss Ford, yes sir.

Q. Will you tell the Court what sessions you did attend?

A. I attended three sessions on Friday, one on Saturday morning and two on Monday.

Q. Are they the only sessions you attended during the trial?

A. Yes sir.

Q. And during that time did you learn who Judge Boyer was?

A. Yes, I did.

Q. Will you state whether or not you saw Judge Boyer in the courtroom?

(594) A. I saw Judge Boyer in the courtroom on -- let me see --

Q. Answer the question.

A. Yes sir.

Q. At the time you saw him can you give us the session or sessions?

A. I believe I can, sir. I think on Friday morning he was in the courtroom, Friday afternoon, Saturday morning and, to the best of my knowledge, on Monday morning.

Q. Now I want you to state at the time you saw him what was he doing.

A. On the occasion of Friday in the morning and afternoon session I saw Judge Boyer on the bench. The same is true of Saturday morning and, to the best of my knowledge, again on Monday morning it was on the bench.

Q. What was he doing on the bench?

A. I recall on the afternoon session that Judge Boyer conferred with Judge Keller and --

Q. On what occasion?

A. I think it was on an occasion when there was some objection by Mr. Achey and some answers or rulings of some sort were made at the time.

Q. I see. Did that happen more than once, if you recall?

A. I think that on Friday it happened more than once. I would say it happened on perhaps three or four occasions.

Miss Margaret C. Gordon--Direct

Q. Did it happen on any other day besides Friday?

A. It happened on Saturday morning.

Q. On how many times did it happen on Saturday morning?

A. On Saturday morning—I would say that it happened three or four times on Saturday morning.

Q. Now, were you in Court at the time Judge Keller charged the jury?

A. Yes, I was, sir.

(595) Q. And where did you sit, Miss Gordon?

A. I sat on the right side of the courtroom.

Q. You mean the right side as the Judge was sitting?

A. That is right, yes sir.

Q. Where did you sit with reference to Miss Marion Ford, who has been on the witness stand?

A. You mean —

Q. Where did you sit relative to her?

A. Each day —

Q. No; that particular day.

A. That particular day I sat next to Miss Ford in the second row.

Q. The second row?

A. Yes sir.

Q. Did you observe whether or not Judge Boyer was in the courtroom during that charge?

A. Yes, Judge Boyer was in the courtroom during that charge.

Q. Where was he, Miss Gordon?

A. He was sitting in the chairs reserved for members of the bar.

Q. Do you know whether—what chair he was—the first, second or third from the end?

A. I couldn't say it was in the end chair he was seated. Whether it was the second or third chair, I am not sure.

Q. Will you state whether or not you saw any person seated near him at that time?

A. Seated next to the Judge was the District Attorney Mr. Biester.

Q. Now, did you observe anything unusual occurring on that occasion—on the occasion of the charge?

A. Yes, I did, sir.

Q. Will you tell now—speak out loud so that the Court can hear you—what you observed?

(596) A. It was during the charge the Judge Keller—almost the close of the charge, I would say —

Q. Almost what?

A. Almost the close of the charge, I believe it was, to the jury, and the Judge stopped to inquire whether or not everything was in order, if there was any additional information he should have—official words to that effect. I know that Mr. Achey answered that but it wasn't answered by anyone—Mr. Biester —

Q. Then what happened?

A. Then the Judge proceeded to make his final charge to the jury, as I recall it —

Q. Finish his charge?

A. Finish his charge to the jury. It was during that period that I noticed—as a matter of fact I was looking at Judge Boyer at the time—it was during that period I noticed that a note was being handed to Mr. Biester —

Q. By whom?

A. By Judge Boyer.

Q. What did Mr. Biester do with the note?

A. Mr. Biester straightened in the chair and read the note—and straightened in the chair and immediately he got up from the chair and went to the bench.

Q. Now prior to your seeing the note being handed by Judge Boyer to Mr. Biester did you observe anything else, or was that your first attention to the note?

Miss Margaret C. Gordon—Direct

A. My first attention—I think my first attention to the note was the raising of Judge Boyer's arm. I was looking that way. I noticed the note was being passed to Mr. Biester.

Q. Did you see any person do any writing on that note?

(597) A. No sir.

Q. When Mr. Biester then went to the bench what did he do?

A. He stood there to attract the Judge's—Judge Keller's attention.

Q. Was he finally recognized?

A. He was finally recognized by Judge Keller.

Q. Without stating what he said—because we have the record here—do you remember whether he said anything?

A. He thought there was some kind of error made of some kind. I don't recall what that was.

Q. At that time, the time this note-passing took place, will you state whether Judge Boyer and Mr. Biester were in a position where they could be seen by the jurors if they had looked?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained. We have had evidence of the location of the jury box, and she can describe the condition of the courtroom and what, if anything, there was between the jury and the two gentlemen in question if they were where she said they were.

BY MR. MARGIOTTI: Yes sir; all right.

Q. Was there anything between the jurors and the Judge and Mr. Biester at the time the note was passed that would obscure the view of the jury?

Miss Margaret C. Gordon—Direct

A. Other than a table or two, sir; I would say that is all.

Q. Can you tell me—do you understand this map, which has been marked "Relator's Exhibit No. 135?"

A. Yes, I do, sir.

BY MR. MARGIOTTI: (598) If Your Honor please, for the record we have agreed that this map is on a scale of one-fourth inch equals one foot.

Is that right?

BY MR. VAN ARTSDALEN: That is correct.

BY MR. MARGIOTTI:

Q. Can you tell me about where you were sitting? Will you point to it?

A. I was seated about there. (Witness indicates.)

Q. Pointing now to the second row —

A. There was an aisle there; as I recall it. I was in through here. (Witness indicates.)

BY MR. MARGIOTTI: Would Your Honor have objection if she placed a "G" on there?

BY JUDGE MURPHY: No.

BY MR. MARGIOTTI:

Q. Just put the letter "G" where you were.

BY MR. VAN ARTSDALEN: We object to this exhibit being marked.

BY JUDGE MURPHY: Well, we have got that before

Miss Margaret C. Gordon—Direct

617a

and we already have a mark there, and she said she sat next to Miss Ford. Therefore, she will be next to the one that is on there—no, it is on Boyer—Judge Boyer. Let her put a "G" where she sat.

(599) (Witness marks on the exhibit a "G" where she sat.).

BY THE COURT: We ask the District Attorney: Is it your recollection she is now placing a mark at the point where we have previously indicated in the record Miss Ford said she sat?

BY MR. VAN ARTSDALEN: I believe that is correct.

BY MR. MARGIOTTI:

Q: Can you point to the place where Judge Boyer and Mr. Biester were?

A. It was over in this section, Your Honor.

BY MR. MARGIOTTI: She says "It was over in this section." She is pointing to the furthest chair which says "Judge Boyer," the one next to it towards the center of the room and the one next to that towards the center of the room.

BY JUDGE MURPHY: She is pointing exactly to the chair that Miss Ford marked.

BY MR. MARGIOTTI: Not exactly. She points to three chairs.

BY JUDGE MURPHY: Were they the first two or second and third?

BY THE WITNESS: Yes.

BY JUDGE MURPHY: Were they on the first two or second and third?

BY THE WITNESS: To the best of my knowledge, he sat over in this section. I am not certain whether it was the second and third or first and second.

(600) BY JUDGE MURPHY: All right.

BY MR. MARGIOTTI: You may cross-examine.

CROSS-EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Miss Gordon, when did you first learn of this case?

A. I would say perhaps a day or two after it happened.

Q. And you are a friend of Miss Ford's, is that correct?

A. Yes sir.

Q. Are you a friend of the Darcy family?

A. Yes sir.

Q. And were you at the time of this occurrence?

A. No. At the time of this occurrence I was a friend of Miss Ford's only.

Q. All right. Have you any business connections with Miss Ford?

A. None whatever.

Q. Do you run your own real estate and insurance agency?

A. No sir, I am associated.

Q. With whom?

A. M. C. Hild.

Q. M. C. Hild. Where is that business office?

619

Miss Margaret C. Gordon—Cross

A. 5043 Frankford Avenue.

Q. What was the occasion of your going to the Darcy trial?

A. As a friend of the family's I was interested in the case.

Q. You were a close friend of the family?

A. Not at that time. I was a close friend of the aunt.

Q. You came to Doylestown on what date?

A. The 11th. It was on a Friday.

Q. It was on a Friday?

A. Yes sir.

(601) Q. Did you stay in Doylestown during that period of time?

A. No, we went home in the evening.

Q. You went home every evening?

A. Yes sir.

Q. When you came Friday with whom did you come?

A. I came with members of the Darcy family.

Q. Who were they, please?

A. It was the father; I believe it was the daughter Jean; I am not certain, sir.

BY MR. MARGIOTTI: What?

BY THE WITNESS: The daughter Jean.

BY MR. VAN ARTSDALEN:

Q. You did not come with Miss Ford on that occasion?

A. Not on that occasion; not on Friday.

Q. So that you were a friend of the family at that time, as well as Miss Ford?

A. That is right. I knew the family.

Q. And then you say you saw Judge Boyer on the bench Friday morning, is that correct?

A. Yes sir.

Q. And did you get there before Court started?

A. Yes sir, we did, sir.

Q. You were there when Court came in?

A. Yes sir.

Q. Did both Judges go up on the bench?

A. Yes sir.

Q. How long did Judge Boyer remain there Friday morning?

(602) A. As I recall it, the Judge left—I can't say in what space of time, and it is my recollection that he came back on the bench during the morning.

Q. Did he make any statements during the course of that morning while on the bench that you heard?

A. Not that I heard, sir.

Q. Did he make any statements to the jury?

A. Not that I heard, sir.

Q. Did he make any statements to Mr. Achey or to any of the attorneys there that you can recall?

A. Not that I can recall.

Q. Did he make any statements to any of the witnesses?

A. Not that I can recall.

Q. Did he ask any questions?

A. No, not that I can recall.

Q. Now you attended the Friday afternoon session, is that correct?

A. Yes sir.

Q. You say Judge Boyer was there on that session?

A. Yes sir.

Q. Was he on the bench Friday afternoon?

A. Yes sir.

Q. For how long a period of time?

A. I would say—on Friday afternoon—perhaps one-half hour on the bench.

Miss Margaret C. Gordon—Cross

Q. With whom were you seated on that occasion?

A. In the afternoon I was—I think on that afternoon Mr. Darcy was there, the father, and another friend of the family's, and then other members of the family were seated in the same section.

Q. Were you seated with them?

(603) A. Close to them.

Q. You were not seated with Miss Ford on that occasion?

A. Not on Friday afternoon.

Q. Or Friday morning?

A. Or Friday morning.

Q. Did you sit in the same section on each occasion?

A. Close to the same section.

Q. Was it the same row on each occasion?

A. Yes sir.

Q. You are sure of that?

A. I am quite certain of that, sir.

Q. Was Miss Ford in the same row—in the same row with you Friday afternoon or morning?

A. Yes sir. She was in the same row.

Q. You are sure of that?

A. In the afternoon. I am sure.

Q. Are you sure about the morning?

A. No sir, in the morning I don't recall Miss Ford being there in the morning.

Q. Did you know Joe Darcy at that time?

A. The father or the son, sir —

Q. The man that testified here in Court.

A. Yes, I did.

Q. Was he seated with other members of the family?

A. I don't recall him being there.

Q. You don't recall him being there?

A. No sir.

Q. Now, did I understand you to say that you observed

on Friday afternoon—or on Friday afternoon three or four occasions Judge Boyer conferred with Judge Keller?

A. Yes sir.

(604) Q. Did I understand you to say that was at times when there were objections made by Mr. Achey?

A. I said it was at times when some objections were made by Mr. Achey.

Q. By Mr. Achey?

A. Yes sir.

Q. Do you know how many times Mr. Achey objected on Friday afternoon?

A. I would say perhaps there were three or four objections.

Q. Do I understand on each occasion he objected Judge Boyer conferred with Judge Keller?

A. I would say on perhaps three of those occasions.

Q. And were they all, those objections, made within the one-half hour you say Judge Boyer was on the bench that afternoon?

A. Would you repeat the question —

BY JUDGE MURPHY: Read the question, Mr. Reporter.

(Question read by the Reporter.)

BY THE WITNESS:

A. No, I wouldn't say they all were made within the one-half hour, no sir.

BY MR. VAN ARTSDALEN:

Q. You did say Judge Boyer was on the bench for one-half hour?

Miss Margaret C. Gordon—Cross

A. Approximately one-half hour.

Q. Was that from the opening of the session for one-half hour thereafter?

A. I would say it was later in the afternoon—in the afternoon session.

Q. Do I understand then now that Judge Boyer did not come on the (605) bench at the opening of the Friday afternoon session?

A. I do not recall him on the bench at the opening of the Friday afternoon session of Court. I recall him in the courtroom during the afternoon session.

Q. What time?

A. I would say that it was between 2:30 and 3:00 o'clock.

Q. And he was on the bench then for approximately one-half hour?

A. I would say approximately one-half hour.

Q. It was during that period there were three or four objections raised by Mr. Achey?

A. I don't believe I said that. I said there were three or four during the afternoon.

Q. You did say Judge Boyer conferred with Judge Keller on three or four occasions when Mr. Achey made those objections?

A. I don't believe I said it that way. I said there were three or four objections in the afternoon. Then I understood you to ask me how many times they conferred, and I said three or four times, I believe.

Q. You don't know what they were conferring about, do you?

A. No sir.

BY JUDGE MURPHY: You now say, Miss Gordon, you saw Judge Boyer and Judge Keller conferring three different times separate and distinct during that afternoon?

BY THE WITNESS: Yes, Your Honor.

BY JUDGE MURPHY: How far apart were they? Will you give us that—your best judgment? Then go on.

BY THE WITNESS: (606) I would say that they averaged perhaps twenty—one instance twenty minutes, I would say, and perhaps one-half hour there and maybe longer intervals, within that; I would say within less than two hours, Your Honor.

BY JUDGE MURPHY: I will have to clarify. I understood you to say Judge Boyer was on the bench for approximately one-half hour that afternoon?

BY THE WITNESS: Yes sir.

BY JUDGE MURPHY: Did you see him go on the bench more than once?

BY THE WITNESS: Just the one time.

BY JUDGE MURPHY: Well then, these so-called conferences that you are talking about, or consultations, between the two Judges must have occurred within that one-half hour—would they not?

BY THE WITNESS: I would say two or three occurred within that one-half hour.

BY JUDGE MURPHY: When did they start occurring?

BY THE WITNESS: Are you speaking of objections now.—

BY JUDGE MURPHY: No. I am speaking of these consultations or conferences that you say the two Judges had while they were seated on the bench.

(607) BY MR. VAN ARTSDALEN:

Q. How many times did you actually see them talking to each other?

A. I would say three or four times while he was on the bench. Now with the time element, and I am not too sure about the time element —

Q. You are not too sure when he came on the bench and when he came off the bench?

A: I am sure it was after 2:00 o'clock.

Q. You are sure he wasn't on there at the opening of the afternoon session?

A. I am not sure of that.

Q. Then, I take it, you are not sure whether he was on the bench more than once that afternoon?

A. To the best of my knowledge, he was on the bench on one occasion that afternoon.

Q. Did you attend the Friday evening session or not?

A: Yes, I did.

Q. Was Judge Boyer on the bench during the Friday evening session?

A. No sir.

Q. Now, were you in Court on Saturday morning?

A. Yes, I was; yes sir.

Q. Was Judge Boyer on the bench Saturday morning?

A. Yes sir.

Q. Do you know whether he left the bench Saturday morning?

A. To the best of my knowledge, he did not leave the bench Saturday morning.

Q. He was there all Saturday morning?

A. To the best of my knowledge.

Q. That is your recollection?

A. That is my recollection, yes sir.

(608) Q. Did you see Judge Boyer on the bench any time after that, after Saturday morning? How about Saturday afternoon?

A. No, I wasn't in Court Saturday afternoon, sir.

Q. What about Monday morning?

A. Monday morning—Judge Boyer was on the bench Monday morning.

Q. How long—all morning?

A. Not all morning. I think on Monday morning the two Judges were on the bench, as I recall. Then later in the day I recall Judge Boyer left and later in the day —

Q. What time was it when he left?

A. I would say it was approximately fifteen minutes after Court opened or maybe sooner than that. I just know approximate times.

Q. Was it before or after the trial itself started? When I say "the trial itself started," I mean commenced that morning.

A. I think it was before the trial started that morning.

Q. In other words, he came on the bench but before the trial got under way again he went off the bench, is that correct?

A. That is correct.

Q. Did you see him on the bench at any other time?

A. Yes, he did come back on the bench during the morning session.

Q. How long was he on the bench during that occasion?

A. I would say he was on the bench during that occasion a little less than an hour, as I recall.

Q. What time did he come back?

• Miss Margaret C. Gordon - Cross

A. I think it was after recess. I am not quite sure now. I will have to think. Just a moment, sir. I think it was after recess. I am sure it was after recess.

Q. What time was the recess?

(d09) A. Well, approximately around 10:00 o'clock. I am not sure of the time on that.

Q. The recess was around 10:00 o'clock?

A. No. Beg your pardon! The recess was around—I am trying to get my mind straightened on two days, between Saturday and Monday. The recess I am not sure about, but I believe the Judge came into the courtroom around—I would say around 10:30.

Q. Around 10:30. How long was he off the bench then?

A. Oh, about one-half hour or so.

Q. What time did Court start that morning?

A. I think around 10.00 o'clock. I am not sure. I am not certain of that.

Q. You say he was on the bench ten or fifteen minutes before the trial got underway?

A. I said I am not sure of the time. It seemed like ten or fifteen minutes. It might have been a matter of seconds before the trial got under way because we got there early.

Q. You say he was off the bench one-half hour, then he come back on and stayed on the bench an hour?

A. I said a little less than an hour, I thought.

Q. That is what day again?

A. That was Monday morning.

Q. That was Monday morning. Now, what about Monday afternoon?

A. No sir.

Q. Did Judge Boyer come on the bench Monday afternoon?

A. No sir.

Q. He did not?

A. No, sir.

Q. Were you there at the opening of the session Monday afternoon?

A. Yes, I was, sir.

(610) Q. And when did you first observe Judge Boyer in the courtroom Monday afternoon?

A. To the best of my recollection, it was when I entered the courtroom that he was there.

Q. What time did you enter the courtroom?

A. I think it was a little before 1:30.

Q. Where was Judge Boyer at that time?

A. Judge Boyer was sitting in the chairs reserved for counsel and members of the bar.

Q. Now, Miss Gordon, was there not a passage-way between the chair where Judge Boyer was seated, as you say, and a table, the nearest table?

A. I would say there would be an opening.

Q. Did you see people walk through there?

A. No, I didn't, other than the immediate persons that were concerned.

Q. Yes; but you did see people walk between the chairs, that row of chairs where you say Judge Boyer was seated, and the nearest table?

A. I don't recall, sir.

Q. Is it not a fact that in front of this row of chairs where you say Judge Boyer was sitting, there was a space of several feet and then there was another group of chairs and then beyond that a table?

A. As I recall, they were off to the side of the courtroom. I would have to —

Q. Now, Madam, referring to this "Exhibit No. 135" —

A. Yes sir.

Q. —you see the chair that has been marked there "Judge Boyer" — you say he was sitting in one of those chairs in that immediate vicinity; is that correct?

Miss Margaret C. Gordon—Cross

A. Yes sir.

(611) Q. One of the chairs in that row?

A. Yes sir.

Q. Is it not a fact that immediately in front of that chair as that chair was facing there was another group of chairs around the table, as is shown in that diagram?

A. I don't believe it was immediately in front. I would say it was across this way more so, not immediately in front. What I was trying to say is it would be back this way more.

BY MR. MARGIOTTI: At that time she pointed to the table that is in the diagram and put it back further toward the bench.

BY JUDGE MURPHY: Miss Gordon, in your judgment; how far was it from where Judge Boyer was sitting to the nearest point of any table in that courtroom; if you know?

BY THE WITNESS: I don't know, Your Honor, in feet. I can just point to the distance here, to the best of my knowledge.

BY MR. VAN ARTSDALEN:

Q. Miss Gordon, was there not in front of the chair where Judge Boyer sat another row of chairs before you came to any table?

A. Not that I recall, sir.

Q. I show you "Relator's Exhibit No. 119," being a picture of the courtroom. Do you recognize that picture?

A. Yes, I do, sir.

Q. All right. Now then, do you see any change in the position of any of the furniture or tables in there from the time you say you were there on Monday afternoon?

A. No sir.

Q. What is that exhibit?

(612) A. "No. 119." Just as I said, the table would be back toward the bench, as I recall it, which it doesn't look that way in this exhibit.

Q. When you say "this exhibit," you are referring to "Exhibit No. 135?"

A. Yes sir.

Q. How about "Exhibit No. 119?"

A. I don't understand the question sir.

Q. Miss Gordon, I asked you whether there was any change observable to you in the position of the furniture at the time that you were at the trial on Monday afternoon from that that is shown on "Relator's Exhibit No. 119," and I believe you said "No sir" —

BY MR. MARGIOTTI: No —

BY JUDGE MURPHY: What is the answer?

BY MR. MARGIOTTI: That is better.

BY JUDGE MURPHY: Read the question, Mr. Reporter.

(Question read by the Reporter.)

BY THE WITNESS:

A. No sir, and I believe, just as I said, the table that is shown in this exhibit would be back further, as it would appear in this exhibit.

BY JUDGE MURPHY: Do I understand you to say that that picture you now have in your hand portrays that courtroom as you saw it on that Monday in June 1948?

Miss Margaret C. Gordon—Cross

BY THE WITNESS: (613) To the best of my knowledge, Your Honor, it does portray the location—the outline of the courtroom.

BY JUDGE MURPHY: Does it portray the objects therein?

BY THE WITNESS: To the best of my knowledge, yes sir.

BY JUDGE MURPHY: What is your next question?

BY MR. VAN ARTSDALEN:

Q. You say you did not see Judge Boyer write any note, is that correct?

A. No sir.

Q. You did observe Judge Boyer passing a note to Mr. Biester, is that correct?

A. Yes sir.

Q. How far away were you, please, at that time—approximately?

A. I would approximate perhaps eight or nine feet.

Q. And it is not a fact Mr. Biester and Judge Boyer's backs were to you at that time?

A. I would say sideways, sir. You could see—I could see also the view sideways. It is a little confusing.

Q. Now, Madam, just one other question. On Friday afternoon were these objections that you state were made—were they made before or after the afternoon recess?

A. I don't recall, sir.

BY MR. VAN ARTSDALEN: No further questions.

BY MR. MARGIOTTI: No further questions.

614
Discussion

(Witness excused.)

Your Honor, the Relator rests.

(614) BY MR. RYDER: If the Court please, the Commonwealth moves to dismiss the Petition for the reasons asserted in the motion to discharge the rule and the brief in support thereof, and also on the additional ground that the evidence produced during the course of this hearing on behalf of the Relator is insufficient in quality and quantity to establish that the Commonwealth of Pennsylvania is about to deprive the Relator of his life in violation of the due-process clause of the Fourteenth Amendment.

BY JUDGE MURPHY: Ruling reserved. We will hear from the other side.

BY MR. RYDER: May I suggest that since the original application to this Court has not been executed by the Relator himself but by his attorneys —

BY JUDGE MURPHY: Before the Relator rests—and we ask that the rest be stricken off so that the Court can ask a question. If you don't, we will ask the question nunc pro tunc.

We notice that the defendant, David Darcy, has been in this courtroom from the beginning of this proceeding throughout every session until this moment; and we now direct this question to David Darcy himself, the defendant: Mr. Darcy, is there anything you have to add to what has been said here throughout this proceeding—anything you want to add on your own behalf? You have a right to testify as a witness. You have a right to take the stand, and you have a right to tell this Court anything you think will add light on this proceeding. What is your wish?

BY DAVID DARCY: No, Your Honor.

(615) BY JUDGE MURPHY: You don't desire to add anything to what your lawyers have done and what has happened here in the courtroom?

BY DAVID DARCY: No, Your Honor.

BY JUDGE MURPHY: Do you have confidence in your attorneys that are in Court at the present time?

BY DAVID DARCY: I do, Your Honor.

BY JUDGE MURPHY: Mr. Margiotti, were you at any time throughout this entire proceeding denied the opportunity to talk to your client?

BY MR. MARGIOTTI: I was not.

BY JUDGE MURPHY: Yesterday's paper—one of them says there was no access permitted, as we understood it.

BY MR. MARGIOTTI: Well, as a matter of fact, I talked to my client when he was in the Marshal's office, and yesterday I talked to him here in the presence of the Marshals, but I didn't care whether they were there or not.

BY JUDGE MURPHY: What I mean is I saw a piece in one paper—I won't say in what city, but, at any rate, there was a piece in the paper that apparently would give the opinion that access was denied to the defendant.

BY MR. MARGIOTTI: That is not true.

BY JUDGE MURPHY: (616) Certainly, this Court

knew nothing about it. We wouldn't stand for anything like that.

BY MR. MARGIOTTI: Of course, not. I know you wouldn't stand for it. It didn't happen, and if that had happened, you would have known about it.

BY JUDGE MURPHY: I think so.

Going on; I want the record to show the defendant has been in Court, he has had access to his counsel, he has confidence in his counsel, and we have that expression, and has been afforded an opportunity to speak if he desires.

BY MR. MARGIOTTI: The question of taking the stand has been discussed with him by me.

BY JUDGE MURPHY: He has been afforded the opportunity and he has had a discussion with Mr. Margiotti.

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: He has confidence in his counsel and on the record made in Court.

The Court has gone as far as it desires into the inquiry. I am to be exhaustive on that phase.

Now the Relator rests, and if he doesn't, the Court will direct that that phase of it is over for the time being.

BY MR. RYDER: I was going to suggest to the Court it might be judicially expedient since the application to this Court has (617) not been executed by the Relator but by his attorneys, that you inquire of the Relator whether or not he approved of these proceedings.

BY JUDGE MURPHY: Well, we will ask that question.

Discussion

Mr. Darcy—I know he is not under oath; he is here in Court and we will take his answer. Mr. Darcy, there has been filed in this Court a Petition for a Writ of Habeas Corpus and through that Writ these counsel, Mr. Margiotti and Judge Pannell, are attempting to obtain your discharge from custody. Do you approve of what they are doing?

BY DAVID DARCY: Yes sir, Your Honor.

BY JUDGE MURPHY: And do you approve of that Writ being in process right now?

BY DAVID DARCY: Yes sir, Your Honor.

BY JUDGE MURPHY: All right, I think we have covered that. If we didn't, we would hear in this one pretty quickly. All right, sir.

Let me say this: It is 11:00 o'clock and we have made some progress. Instead of getting you started and then taking a ten-minute recess, we will take a ten-minute recess now and then get started.

(Recess.)

(Court resumes after the recess with all parties, including the Relator, David Darcy, present in Court.)

MR. CLARENCE H. DANNENHOWER, called and sworn on behalf of the Respondent, on direct and cross-examination, testified as (618) follows:

DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Where do you live?

A. Doylestown.

Q. What address in Doylestown?

A. Lincoln Avenue.

Q. What is your age?

A. Sixty-nine.

Q. What is your occupation?

A. I am a Court Crier for the Bucks County Courts.

Q. How long have you been a Court Crier for the Bucks County Courts?

A. Three years.

Q. Are you related to me in any way?

A. I am your uncle.

Q. Prior to being Court Crier did you hold any other official position with the Bucks County Courts?

A. I was a tipstaff.

Q. When were you first appointed?

A. April 1941.

Q. Were you a tipstaff from April 1941 continuously on down to the time that you were appointed Court Crier?

A. That is right.

Q. At the time of the trials of Foster-Zietz and of David Darcy what was your position?

Clarence H. Dannenhower—Direct

A. I was a tipstaff.

Q. Now, Mr. Dannenhower, what, if any, connection did you have with the jury of the case that tried David Darcy?

A. I was appointed tipstaff in charge of the jury.

(619) Q. Will you tell us whether or not you recall the morning of Monday, June 7, 1948?

A. I do.

Q. And when were you appointed as tipstaff in charge of the Darcy jury?

A. As soon as the first juror was accepted by both sides.

Q. Were you sworn in at that time?

A. I was sworn in at that time.

Q. All right. Now, Mr. Dannenhower, will you tell the Court, please what arrangements, if any, you made for the convenience and comfort of the jurors?

A. I engaged the rooms at the Doylestown Inn.

Q. Where is the Doylestown Inn in relation to the Bucks County Courthouse?

A. Why, it is on State Street about one-fourth of a block from Main Street and is about three squares from the courthouse.

Q. Will you tell us, please, how the jury was selected for this case?

A. Why, they were sent to another room—all the panel, other rooms, and were drawn; two names were called at a time. The first one came into the courtroom, the other one was retained outside the courtroom, and they were questioned.

Q. Were the jurors so drawn and called on voir dire individually questioned?

A. Individually questioned.

Q. And were those questions heard by other members of the panel who had not yet been called in?

A. Absolutely not.

Q. Mr. Dannenhower, did you remain in the main courtroom where this case was tried throughout all the proceedings?

(620) A. Only while the jurors were in the room, the jurors that were trying the case.

Q. And were you in the main courtroom on all occasions when any of the jurors who were sworn in this case were in the room?

A. Right.

Q. Now you have testified, I believe, that you made arrangements for the jurors to stay at the Doylestown Inn. Will you tell us, please, what arrangements were made so far as getting clothing and other necessities to the members of the jury?

A. We took them in to another room, the law library, and they communicated their home address and phone number and the tipstaves in charge called those addresses and made arrangements for the clothing to be sent there.

Q. Do I understand then that the communications with the families for clothing were through the tipstaves?

A. Absolutely.

Q. What other tipstaves, if any, were used to take charge of this?

A. Mrs. Gwinner was appointed when the first woman juror —

Q. Do you recall her first name?

A. No, I don't, at the present moment.

Q. What other tipstaves?

A. She was appointed as soon as the first woman juror was accepted. ~~Gideon~~ Gahman was appointed, I think, next, and then Mrs. Ethel Van Sant.

Q. Do I understand there were four tipstaves?

A. Four tipstaves were in uniform.

Q. Will you tell us, please, where or what you know about Mrs. Gwinner at the present time?

Clarence H. Dannenhoffer—Direct

A. Mrs. Gwinner passed on about a month ago.

Q. You mean she died?

A. Yes sir.

(621) Q. Now after a juror was accepted was that juror at any time allowed—strike that. After a juror was selected how did the tipstaff take charge of that juror? Just explain the process.

A. Why, they were taken to another room while the rest of the panel was called—in charge of other tipstaves that were already sworn.

Q. What about the meals?

A. At the meals we had a separate table at the hotel to the rear of the dining room. I was seated at one end, Mrs. Van Sant the other, and the two tipstaves on either side of the table, Mr. Gahman —

Q. What about the rooms for the jurors at the hotel?

A. They were so situated that my room was on the corner of the main corridor to the entrance to that corridor.

Q. Will you state whether or not you would leave locked your room at night?

A. No, that door was opened at night.

Q. What about the rooms of the jurors, were they locked or not?

A. They were not locked.

Q. Why was that?

A. Fire hazard.

Q. Now, were any newspapers read by any of the members of the jury that tried the Darcy case?

A. No newspaper was seen by a juror.

Q. What precautions, if any, were taken by you to prevent newspapers from getting to any of the jurors?

A. Why, when any of their baggage or bags was addressed to them it was opened either by myself or one of the other tipstaves in their presence and gone through before they were turned over to them.

Q. Gone through for what purpose?

(622) A. To see if there was any newspapers, letters or communications of any kind in it.

Q. What about communications by means of radio?

A. By means of what?

Q. Radio.

A. There was no radio.

Q. Was there any radio in any of the hotel rooms?

A. No.

Q. Were the jurors allowed to listen to any radio programs?

A. Absolutely not.

Q. What about television?

A. No television.

Q. Did any of the jurors see any television shows during the time from the time that they were first accepted as jurors up until the time they were discharged?

A. Absolutely not..

Q. What arrangements were made in the evenings after the sessions of Court closed for the day?

A. Why, the jurors were taken for a walk in company with the four tipstaves.

Q. Were they taken in a body?

A. In a body; never allowed to separate.

Q. At any time throughout the course of that trial were any of the jurors allowed or did any of the jurors speak to any persons whatsoever except tipstaves and other members of the jury?

A. Absolutely not.

Q. What about during the evenings; what was done for the comfort and convenience of the jurors?

A. I had arranged for a private room where we could gather in the evening.

(623) Q. During the course of time from the time that a

Clarence H. Dannenhower—Direct.

juror was accepted up until the time they were dismissed, was there any discussion among any of the jurors you heard relative to this case?

A. Absolutely not.

Q. Mr. Dannenhower, by what means was the jury brought in to the courtroom in the mornings?

A. They were brought in the rear entrance through the corridor, taken to the law library and kept there until they were requested by the Court to come in.

Q. And how was the jury actually brought into the main courtroom?

A. Why, through this back door, side door. They had about ten feet to walk to the first jury chair from that door.

Q. Was the rear—will you state whether the rear corridor was used generally by the public?

A. No, it was not.

Q. Will you state whether or not the public was prohibited from using the rear corridor?

A. They were.

Q. Now, Mr. Dannenhower, I refer you to "Relator's Exhibit No. 135," and ask you to point out the means by which the jury was brought into the courtroom on each occasion.

A. This is the law library —

Q. Strike that question that I just asked. Was the jury brought in and taken out from the main courtroom by the same means on each occasion?

A. On each occasion.

Q. All right, sir. Will you point out, please, just how the jury was brought in?

A. This is marked "Attorney's Room," and there was another room, the law library, this side of that towards the rear of the court- (624) house.

Q. Which is not shown on "Relator's Exhibit No. 135?"

A. Which is not shown on "Relator's Exhibit No. 135,"

It was only a few feet from the rear entrance to the court-room where we brought the jury in.

Q. Now there appears—will you point out, please, the method by which the jury was brought in?

A. The jury was brought in through where it is marked "Exit."

Q. The place you are pointing to is an opening marked "Exit" to the left of the bench as the Court would sit on the bench, is that correct?

A. That is right.

Q. And from that where were they taken?

A. Directly to their seats.

Q. How far was that from this chair, approximately?

A. It was approximately ten to eleven feet.

Q. All right.

A. The first chair.

Q: Again referring to "Relator's Exhibit No. 135," Mr. Danenhower, will you state whether that accurately depicts the present situation in the Bucks County Courthouse, Courtroom No. 1?

A. It does.

Q. And what, if any, changes are there—or were there at the time of the trial from that as shown on "Relator's Exhibit No. 135?"

A. The witness stand here; the entrance to that is now changed to what it had been at that time.

Q. Was the witness stand location changed in any way?

A. No. The witness stand location is exactly the same.

Q. Do I understand it is merely the manner of approaching the stand?

A. The manner of the witness who enters the witness stand.

(625) Q. What other changes, if any, do you observe?

A. None, sir.

Clarence H. Dannenhower - Direct

Q. What about the furniture, sir?

A. The furniture is practically the same. It may have been reupholstered since then.

Q. How many jurors were selected for this case?

A. Twelve jurors, two alternates.

Q. I notice on "Relator's Exhibit No. 135" there are shown what appear to be twelve seats. Where did the alternate jurors sit?

A. The two alternates were seated directly in back of No. 7 and No. 8 jurors.

Q. All right, sir. Is there—or was there a passage-way between the place where the jurors were seated and the row of chairs that are shown on that diagram as being right along the railing that separates the spectators from the main floor of the courtroom?

A. There was.

Q. And how wide was that passage-way?

A. Oh, I would say five to six feet.

Q. During the course of the trial and the selection of the jury where did you sit?

A. I sat to the rear of the jury on the seat on a raised platform where I could overlook all the jurors in the courtroom—right here.

Q. Was that a chair immediately in front of the railing that separates the spectators, benches and witness-spectators; from the main floor of the courtroom?

A. It was.

Q. At any time throughout the trial of the Darcy case will you state whether or not any spectators or witnesses in the courtroom spoke to any of the jurors other than what may have been said on the witness stand?

(626) A. Absolutely not.

Q. Mr. Dannenhower, were you in uniform throughout these proceedings?

A. Yes.

Q. What about the other tipstaves?

A. They were all in uniform.

Q. How many tipstaves were there in the courtroom throughout the trial, do you know?

A. There was one at the main entrance, and on some occasions two. There was one directly across from where the Sheriff sat right here, the end of the aisle —

Q. You are pointing to a location immediately to the left of the main aisle leading into the courtroom and a chair directly in front of the railing that separates the spectators' benches from the main floor of the courtroom?

A. That is correct. That is a raised platform and the chair he is seated on. There was another at the end of this aisle —

Q. You are pointing to a chair that we have marked "Judge Boyer," is that correct?

A. Yes sir. There was another here —

Q. You are pointing to a chair immediately to the left of that same aisle, is that correct?

A. That is correct. And there was one at the entrance to the Judge's chambers.

Q. All right. How many tipstaves were there altogether in the courtroom during those proceedings?

A. Nine or ten.

Q. All right. And were they all in uniform?

A. They were all in uniform.

Q. Do you recall whether there were any ununiformed policemen in the Court?

(627) A. I think maybe some of the State Police at times were with — were in uniform, but not more than one or two.

Q. Mr. Dannenhower, you have mentioned on various occasions the jury was taken into a room which you have identified as the law library, is that correct?

Clarence H. Dunninghauer—Direct

A. That is right.

Q. What, if any, precautions did you take to isolate the jury in that room?

A. Locked all other doors, entrance, to that, and we remained in that room with them, some of the tipstaves.

Q. At any time you were in that room were there any other persons in the room besides tipstaves and the jury?

A. Only those sworn in the case.

Q. Now there is in evidence there a room marked "Attorney's Room".

A. Yes.

Q. —is there a door that connects with the "Attorney's Room" —

A. I locked that door and put the key in my pocket.

Q. —between the "Attorney's Room" and the law library?

A. There is.

Q. And what was done in relation to that door when the jury was in there?

A. I locked that door and put the key in my pocket.

Q. At any time you were in there with the jury did you overhear any conversations that may have taken place in any adjoining rooms or hallways?

A. No.

Q. Is that a solid door?

A. That is a solid door.

Q. So that at—is there any way of seeing through that door?

A. No.

(628) Q. During the course of the trial what was done at recess times?

A. At recess times we retired—you mean if a recess was called in between the Courts —

Q. When they took a brief recess what was done?

A. A brief recess we took them to that law library.

Q. What was done so far as personal convenience was concerned?

A. Why, we personally conducted them to the washrooms and saw that there was nobody in there and wouldn't permit them to enter if there was anybody in there.

Q. At any time when any of the jurors were in the washrooms was anyone else in there?

A. No sir, we stood outside the door and prevented anybody from going in.

Q. Mr. Dannenhower, throughout the course of that trial were there at any time spectators seated behind you?

A. Yes. Not in the first couple rows.

Q. At any time throughout the course of that trial did any of those spectators make any comments or statements that were overheard by you?

A. No, I couldn't overhear them.

Q. How close were you seated to the nearest juror?

A. I was right in back of the ninth juror with an aisle between.

Q. Mr. Dannenhower, do you know what tipstaff was in charge of the door leading through what is marked on "Relator's Exhibit No. 135" as, the corridor—I beg your pardon—marked "Corridor" and then "Entrance Hall?"

A. Howard Clymer.

Q. Do you know where he is?

A. Howard Clymer is deceased.

BY JUDGE MURPHY: (629) Where was he?

BY THE WITNESS: He was stationed at the main entrance door to the courtroom.

BY MR. VAN ARTSDALEN:

Q. Mr. Dannenhower, throughout the course of the Darcy

Clarence H. Dannenhower—Direct

trial did you see or observe at any time any disturbances in the courtroom?

A. I did not.

Q. Do you recall of any occasion—will you state whether you recall of any occasion the Court cleared the courtroom?

A. It was never done.

Q. Do you recall whether on any occasion order was called by the Court or the Court Crier?

A. I recall no such instance.

Q. Incidentally, do you know who was the Court Crier during this?

A. Walter Scott.

Q. Where is he at the present time?

A. Walter Scott is deceased.

Q. What can you tell us, Mr. Dannenhower, as to the number of spectators that were seated in the courtroom throughout this trial?

A. I don't think at any time there was more than 300; most times not over 200.

Q. Do you know how many people can be seated in the courtroom?

A. Approximately 500.

Q. Mr. Dannenhower, there has been testimony regarding certain magazines that were observed in the courtroom, specifically copies of a magazine, "Relator's Exhibit No. 136." Did you observe any such magazines in the courtroom?

A. I did not.

(630) Q. You have stated that you were seated on a particular chair, is that correct?

A. That is correct.

Q. Will you describe that chair just a little more fully, please?

A. That chair is on a platform just about the height of this.

Q. How high would you say that it?

A. Why, that is a little better than one foot, I think.

Q. All right. Were you in a position where you could observe the courtroom?

A. I could overlook the courtroom.

Q. And did you observe around in the courtroom throughout the course of this trial?

A. I did.

Q. Do you recall whether Judge Boyer on any occasion sat on the bench?

A. He came into the opening in the morning sometimes; not every morning, I don't believe.

Q. Mr. Dannenhower, would the jury come in and take its seat in the box before or after Court convened?

A. Usually after Court convened.

Q. And how would you know when to bring them into the Court?

A. I was notified by the Court to bring them in.

Q. At any time throughout the course of that trial was the jury taken through the main corridor of the courtroom?

A. Never.

Q. At any time throughout the course of that trial was the jury taken through any groups of people or crowds of people?

A. Never.

Q. At any time throughout the course of that trial did you overhear any conversations relative to this case?

A. I did not.

(631) Q. Now you have stated, I believe, that the jurors were on occasions taken for walks around town. Will you describe those a little more fully to the Court?

A. Well, usually I was up front with them, Mrs. Van Sant with the ladies and Mr. Gähman and Mrs. Gwinner

Clarence H. Dannenhower—Direct

with the body on either side and we walked. In the morning we took a walk before we came over to the courtroom. We took one in the evening before dinner.

Q. What, if anything, did you observe as to other persons besides the jury around on the streets of Doylestown?

A. Very few other people on the streets.

Q. You were present at the time that the verdict was brought in?

A. I was.

Q. Do you recall whether there was any display of any emotions by any of the spectators?

A. I saw no such display.

Q. And did any of the spectators communicate with any of the jurors right after the jury had been dismissed?

A. They did not.

Q. Mr. Dannenhower, did you observe anything unusual take place Friday evening in the Friday evening session?

A. No, I did not.

Q. Do you recall during the Friday evening session where Mr. Biester was located?

A. Mr. Biester was at the defense table.

Q. Was he there throughout the course of that session that evening?

A. I believe so.

Q. You said "defense table," sir.

A. I meant District Attorney's table.

Q. Mr. Dannenhower, will you point out on "Relator's Exhibit No. 135" where you were seated again?

A. Right here. The first aisle going off facing —

(632) Q. You are pointing or indicating a chair immediately in front of the railing that separates the main floor of the courtroom from the spectators' benches and to the right of the first aisle on the right as one enters the courtroom, is that correct?

A. That is right.

Q. And from that position did you have a complete view of the courtroom?

A. I did.

Q. Mr. Dannenhower, were you present throughout the charge of the Court?

A. I was.

Q. There has been—you have been here in Court throughout these proceedings, is that correct?

A. I have.

Q. And there has been testimony relative to a note-passing incident. Did you observe anything in relation to that?

A. I saw no note passed.

Q. In reference to the meals the jurors had, were there other persons allowed to eat in the dining room during that period of time?

A. In the dining room —

Q. Yes.

A. Yes, at other tables.

Q. And how close was the nearest table to any of the jurors' table where any persons other than the jury and tipstaves ate?

A. Why, the nearest table, I should judge, would be the front end of the bench.

Q. Can you give us an estimate in feet?

A. Oh, about eight feet.

Q. And at any time did you overhear any conversation at any of the (633) other tables?

A. I did not.

Q. Mr. Dannenhower, I want to refer to some of these photographs, please. Will you look at "Relator's Exhibits Nos. 118, 119, 120, and 121," please, and tell us whether they accurately depict the conditions presently existing in the Bucks County Courthouse?

Clarence H. Dunninghauer—Direct

A. They do.

Q. There has been some testimony in relation to the location of certain tables. Will you tell us, please, whether these exhibits accurately depict the location of the tables at the time of the Darcy trial?

BY MR. MARGIOTTI: We object, leading. We object to it.

BY JUDGE MURPHY: Reframe your question.

BY MR. VAN ARTSDALEN:

Q. Will you state, sir, whether there are any changes that were present at the time of the Darcy trial, that are not shown?

BY MR. MARGIOTTI: I might just as well have left it go.

BY JUDGE MURPHY: Yes; we will permit that one. Were there any changes now from then. We will permit it.

BY MR. VAN ARTSDALEN: —on those exhibits?

BY THE WITNESS:

A. Why, there are three Judges' chairs there while at the Darcy (634) trial there was only two.

BY MR. VAN ARTSDALEN:

Q. Any other changes?

A. There was a change, as I said, in the witness' entrance

to the witness stand, and everything else appears to be the same to me aside from that. Two of those chairs were re-upholstered since then.

Q. All right. Do you know—strike that. At what time did the jury retire in the evenings to their rooms?

A. Why, we usually gathered in that room that was reserved for the jurors and I think 11:00 o'clock was the latest we left it.

Q. Did all the jurors and tipstaves retire at the same time?

A. Yes. The tipstaves usually waited until after the jury had retired.

Q. Will you state at any time after the jurors retired you observed any of the jurors leave their rooms?

A. I observed none of them did leave the room.

BY MR. VAN ARTSDALEN: You may cross-examine.

CROSS-EXAMINATION.

BY MR. MARGIOTTI:

Q. Are you related to Judge Dannenhower of Montgomery County?

A. Distantly, yes.

Q. I see. Now you have stated that there were nine or ten tipstaves?

A. Yes sir.

Q. And is that the usual number that you have there in that Court?

A. I think we put only one extra one on at that time.

X. During the Darcy trial?

(635) A. That is right.

Q. Where did you place him?

A. It wasn't a him. It was Mrs. Gwinner.

Q. That was the one who is unfortunately dead?

A. That is right.

Q. I understood you to say that the jurors in their selection were in a room when they were called out for their voir dire examination, is that right?

A. That is correct.

Q. And when a juror—and they were called one by one?

A. Correct.

Q. And when a juror was called and he was accepted by both sides did he take his place in the jury box?

A. Just for a brief time.

Q. What do you mean by "a brief time?"

A. Well, maybe a few minutes.

Q. What do you mean by "a few minutes?"

A. Three or four.

Q. Three or four minutes. And did that apply to every juror who was called and actually selected until there was a complete selection of all jurors including the alternates?

A. I think the first two remained until the third juror was called.

Q. I see.

A. That is my recollection.

Q. That is your recollection?

A. Yes sir.

Q. So that we get this clear, Juror No. 1 was accepted by both sides?

A. Correct.

Q. And he would take his place in the jury chair?

(636) A. Yes sir.

Q. And I don't know whether—which is No. 1?

A. The one closest to the witness stand.

Q. And in front?

A. And in front.

Q. And the one going toward the back?

A. No. 6.

Q. Which is No. 7?

A. No. 7 would be the first one in the second row.

Q. Back of No. 1?

A. Right back of No. 1.

Q. Now your recollection is that No. 1 and No. 2 were called and selected?

A. Correct.

Q. How about No. 3?

A. When No. 3 was called and selected, the two seated previously just sat down, and the Court instructed us to take those three jurors to the law library.

Q. To the law library. How do you know there were only three selected at that time?

A. Well, that is my recollection, Mr. Margiotti.

Q. Do you have anything else by which you can determine that except your recollection?

A. None whatever.

Q. It could have been the fourth or fifth?

A. I doubt that.

Q. It could have been more than three?

A. My recollection is three. It might have been more.

Q. It might have been more. Do you remember particularly a juror (637) being called, a prospective juror, who was examined on his voir dire, who made—do you remember a juror—I will give you his name—Harry T. Westlake; do you know him personally?

A. I do not, no.

Q. Well, do you have any independent recollection of his being examined under oath?

A. No, I do not.

Q. Do you have any independent recollection of his having said in answer to a question:

"Well, I think—yes, I have. It is one of the most cold-blooded murders I ever heard of?"

Clarence H. Dannenhoffer—Cross

A. No, I have no such recollection.

Q. Do you recall what, if anything, the Court said to the other jurors who had been selected at that time? Would that refresh your memory?

A. Possibly, I don't know.

Q. Well, I am going to show you the record only for that purpose on Page 97. Just read this and see if it refreshes your memory.

A. I haven't looked at any of the notes.

Q. I appreciate that. But just look at that. Does that refresh your memory, that Page 79 of the testimony—Page 97?

A. I can't say that it does, Mr. Margiotti.

Q. Well, let me ask you then directly. Isn't it a fact that the Court said to the jurors:

"Yes. The jurors already selected will totally disregard that remark or answer by this juror?"

A. I heard something to that effect, yes.

Q. Well, if you heard something to that effect, isn't it a fact that at that time three jurors had already been selected and were (638) seated in their places.

A. I said that before.

Q. You said "two".

A. And the third one, yes.

Q. Then there were three in their places and heard that remark?

A. I think they did, sir.

Q. And the Judge then proceeded to tell them to disregard the remarks?

A. That is correct.

Q. Now then, was it after that that you took the jurors away to some other room?

A. That is correct.

Q. Now at this time will you tell me how many jurors

had already been selected—at the time you first took them away to some other room?

) A. I still think it was three.

Q. Had been selected?

A. Yes.

Q. All right. And they sat there listening to the questions that were propounded to the jurors on their voir dire examination and the answers that were being made?

A. That is right.

Q. And then the three were taken to what room?

A. ~~To the law library~~ which we used.

Q. Which you already pointed out on the map?

A. That is right.

Q. When did you take the next batch up there?

A. Why, they were taken out after each one was selected, it is my recollection.

Q. From that time as each one was selected you took them to the (639) library?

A. Yes sir.

Q. Did that include the two alternates?

A. The two alternates.

Q. Yes.

A. Yes.

Q. When these jurors after being selected—strike. Now you said that—strike that. You say you were a tipstaff in charge of the jury?

A. Correct.

Q. Who was the principal person in charge of the jury, who was the chief of the tipstaves?

A. I had that jury in charge from the beginning.

Q. You had that jury in charge. And you have testified that no person was permitted to visit or contact any of the jurors?

A. That is correct.

Clarence H. Dimmenhower—Cross

Q. While they were under your care, is that right?

A. That is correct.

Q. Do you know a Mrs. Anna L. Reed?

A. Who?

Q. Anna L. Reed. She was one of the jurors.

A. I recall the name. There was a Reed on the jury, I think.

Q. Do you know Squire Reed, her husband, a Justice of the Peace?

A. No, I do not.

Q. From Penins Park?

A. No, I do not.

Q. Do you know or have you any knowledge Squire Reed got into to see and converse with his wife after the jury had been selected and while it was performing its duty as a jury in the Darcy case?

(640) A. No.

Q. Did you see Squire Reed around there?

A. I did not.

BY JUDGE MURPHY: May we ask counsel if he is now reading from one of the prohibited affidavits?

BY MR. MARGIOTTI: No, Your Honor. I have some information from a source which I didn't think reliable; otherwise I wouldn't have asked the question.

Q. Now in this hotel you say the jurors stayed at, the nearest table was about eight feet from the jurors, is that right?

A. It was a distance of about eight feet, yes.

Q. How close were you to that nearest table—you yourself?

A. Approximately eight feet. I sat at the end of the table.

Q. Was that dining room usually filled?

A. Usually, yes.

Q. Do you know how many people that dining room accommodates?

A. No, I wouldn't know.

Q. Well, could you give us some estimate of the number that it accommodated outside of the jury at that time?

A. Well, if you mean the main dining room —

Q. I mean the room in which the jury was being fed.

A. About fifty or sixty people.

Q. And was there a lobby at this Doylestown Inn?

A. Yes.

Q. And how big was that lobby?

A. It was rather narrow.

Q. It was rather narrow?

A. Yes.

(641) Q. And do you know that in that Doylestown Inn there was a newsstand?

A. No.

Q. Did you see a newsstand in the Doylestown Inn?

A. No.

Q. Did you observe any newspapers around the chairs or anyplace in the lobby of the hotel?

A. There could have been. I didn't notice them.

Q. Well, if the headlines were large enough and the person's sight was strong enough to see it, would it depend on the size of the headlines—by looking over, they could see the headlines if they existed?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: If he is asking a witness to speculate, we will let him speculate. If the headlines were big enough, the eyes good enough, if you looked could you see? The answer would have to be yes.

Clarence H. Dillenberger Cross

BY MR. MARGIOTTI:

Q. Is that right?

BY JUDGE WATSON. If everything would be all right, it would be all right.

BY MR. MARGIOTTI. If everything would be all wrong, it would be all wrong too.

BY THE WITNESS:

A. I noticed no newspapers when I came through.

BY MR. MARGIOTTI:

(642) Q. That isn't what I asked you. You didn't see it. Did you look for newspapers as you came through that lobby everyday?

A. I looked to see that the jurors didn't get a chance to look at any.

Q. How did you look to see that the jurors didn't get a chance to look at any?

A. We kept them away from anyplace where there was newspapers.

Q. Isn't there a stand where they sell the Doylestown Daily Intelligencer and other newspapers —

A. No.

Q. —in the Doylestown Inn?

A. No.

Q. Wasn't there at that time?

A. No.

Q. In the dining room—were there people reading newspapers in the dining room?

A. There could have been.

Q. Did you observe them how they read them, whether they read them down in their lap or whether they held them up in this manner, or how?

BY MR. VAN ARTSDALEN: I object. The witness has answered "There could have been." He did not answer he saw any.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTI:

Q. Did you observe any person reading a newspaper in that dining room—yes or no, first?

A. I don't recall.

Q. Did you look to ascertain whether anybody was reading newspapers (643) in the vicinity of the jury?

A. There was none reading newspapers in the vicinity of the jury.

BY MR. MARGIOTTI: We ask the answer be stricken out and just answer my question; it wasn't responsive.

BY JUDGE MURPHY: Read the question, Mr. Reporter.

(Question read by the Reporter.)

BY THE WITNESS:

A. I did.

BY MR. MARGIOTTI:

Q. Where did you look?

Clarence H. Dannenhoffer Cross

A. To my right.

Q. To your right. Where else did you look?

A. I could see if I looked to my right, all the tables close.

Q. Yes sir. Did you look to your left any time?

A. The left—I was seated at the end of the table. It was a long table down this way. I was seated at this end.

Q. Did you look straight ahead?

A. Yes, straight ahead.

Q. You now say in that dining room you did not see any person reading a newspaper?

A. No, I did not say that.

BY JUDGE MURPHY: He says he saw no one reading a newspaper anywhere near the jury.

BY JUDGE WATSON: He said nobody was reading.

BY MR. MARGIOTTI: (644) He said "There could have been," which is a sort of half answer.

BY JUDGE MURPHY: All right, thus far he has said there was nobody close to the jury.

BY MR. MARGIOTTI: I can ask Your Honor, other people were reading papers where the jurors had to pass, and that is what I want to find out.

BY JUDGE MURPHY: You ask. He is your witness.

BY MR. MARGIOTTI: He isn't.

BY JUDGE MURPHY: He is your witness for cross-examination. We want clear answers.

BY MR. MARGIOTTI.

Q. Will you tell me whether or not you observed anybody in that dining room looking at newspapers or had papers?

A. That I couldn't answer, I don't know.

Q. In the courtroom you said you did not see a magazine like this?

A. That is correct.

Q. What was that?

A. That is correct.

Q. You wouldn't say there weren't magazines like this in the hands —

A. I saw none.

Q. And if—have you discussed your testimony before coming to Court?

(645) A. No.

Q. With no one?

A. I may have spoken about the case but only —

Q. I am only asking —

BY JUDGE MURPHY: Let him answer.

BY MR. MARGIOTTI: I thought he had finished.

BY THE WITNESS: I may have spoken to the other tipstaves but I spoke to no one else.

BY MR. MARGIOTTI:

Q. No one else. But you may have spoken to the other tipstaves, is that right?

A. Yes sir. Not as to what I was going to testify to.

Q. The position you have occupied you have already indicated in that courtroom back —

Clarence H. Dannenhower—Cross.

A. Of the jury.

Q. Back of the jury which would be back of Juror 14 approximately, is that right—back of the second alternate?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Now at that time was there—did the District Attorney have more than two tables?

A. The District Attorney had one table.

Q. Do you know whether there were three tables there?

A. There was three tables.

Q. I mean the District Attorney was using.

A. The District Attorney was not—only had the one table.

Q. Do you know where the press table was?

(646) A. Oh, yes.

Q. Do you see what would be the press table on "Relator's Exhibit No. 135?"

A. The press table is to the right of the bench, situated at the bench.

Q. Where it is on the photosat?

A. Right where it is on the diagram.

Q. Was it there at the time of the Darcy trial?

A. It was.

Q. Didn't the Commonwealth use three tables and use two of them for exhibits?

A. There has never been more than three tables on the floor of the courtroom.

Q. I am talking about this particular trial. Didn't the Commonwealth use three tables and use two of them for exhibits?

A. Absolutely not.

Q. You mean to say then from the position that you occupied, as you have already indicated, that you could see all over the courtroom?

A: Practically.

Q. And did you look all over the courtroom practically at one time?

A: At different times.

Q. At different times. While you were looking at one corner of the courtroom something could have gone on in another corner without you observing it?

A: I am there to observe.

Q. What is that?

A: I am there to observe.

(647) Q. Suppose you were looking in one corner of the courtroom and something was going on in the other corner of the courtroom could you see it?

A: If I turned to look that way, yes.

Q. Yes, if you turned to look. Now then, the chairs that were occupied by the two Judges, which you say. Are they the two high chairs shown in "Exhibit No. 118?"

A: They are.

Q. What became of the middle chair?

A: That middle chair was not in existence then.

Q. Who appointed you tipstaff?

A: Who appointed me in charge of this jury—President Judge Hiram Keller.

Q. Who appointed you in charge of the Daney jury—did you have charge of the Zietz-Foster jury too?

A: No, I did not.

Q. What were the police officers doing there?

A: Some of them were there as witnesses. State Police you are referring to—

Q. Any police officers.

A: Some of them were there as witnesses.

Q. And some were there for any other purpose?

A: To see—to guard the prisoners, I suppose.

Q. Were there any other police officers there for some other purpose?

Clarence H. Darrow Lawyer Cross.

A. None that I know of.

Q. Were there any there to maintain peace?

A. No.

BY JUDGE MURPHY: Were the other defendants present during the Darcy (648) trial, according to the transcript, Mr. Van Artsdalen? Were Zietz and Foster and Capone in the courtroom?

BY MR. VAN ARTSDALEN: I don't believe the record so indicates. It isn't my personal recollection.

BY JUDGE MURPHY: They did not appear as witnesses, is that it?

BY MR. VAN ARTSDALEN: No, they were not witnesses. I am quite sure about that.

BY JUDGE MURPHY: Go ahead, Mr. Margiotti.

BY MR. MARGIOTTI:

Q. Now you said you saw Judge Boyer come in in the opening in the morning?

A. Correct.

Q. Sometime you saw him come in and sometime you say he did not come in, is that correct?

A. Correct.

Q: Do you remember how many times you saw Judge Boyer come in for the opening during the Darcy trial?

A. I think every morning with the exception of Saturday morning.

Q. Will you tell me, if you remember, how long he remained on the bench?

A. Only while papers were presented, to my knowledge.
Q. Do you know of any papers being presented by any lawyer?

A. Oh, yes. There was petitions handed up in the morning.

Q. By whom?

A. Different attorneys. I couldn't name them after six years.

(649) Q. Can you name one?

A. That I saw a petition handed up by —

Q. One lawyer that presented a petition any morning.

A. No,

Q. Did you make any record as to when the Judge would leave the bench?

A. No, I made no records.

Q. You are testifying from recollection now?

A. Absolutely.

Q. Now the District Attorney has asked you about whether you observed any note-passing between Judge Boyer and Mr. Biester, and I think you said you did not observe any such thing; is that right?

A. I saw no note passed.

Q. You don't say that you were looking in that direction?

A. I was facing in that direction.

Q. Do you know whether you were looking at Judge Biester?

A. Judge Biester —

Q. He was District Attorney then.

A. Yes.

Q. When did you start looking at him?

A. I was looking at him most of the time during the trial, faced him.

Q. Did you see Judge Boyer there?

A. He was occasionally in the courtroom.

Q. Well, at the time you were looking at Biester where was Judge Boyer?

A. Judge Boyer —

BY MR. VAN ARTSDALEN: I object.

(650) BY JUDGE MURPHY: That can call for 140 answers, and we think it ought to be clarified. The witness has said he was looking at District Attorney most of the time during the trial which lasted seven or eight days. The question is at that time where was Judge Boyer, if you know? We think it is unintelligible.

BY MR. MARGIOTTI:

Q. Do you know when it is charged in this case when the note was passed? You answered the District Attorney. What day was that charged as?

BY JUDGE MURPHY: The witness has said he saw no note-passing.

BY MR. MARGIOTTI: At what day?

BY JUDGE MURPHY: At any time.

BY THE WITNESS:

A. You mean at any time during the charge of the Court

BY MR. MARGIOTTI:

Q. I am asking you if you know what is the charge of

the Refator here with reference to the note passing through
or passing—makes no difference. What is the charge?

BY JUDGE WATSON: What do you mean "the charge"—
the charge contended?

BY MR. MARGIOTTI: Right.

BY JUDGE WATSON: I thought there was some charge
made in the Petition or something. Is there such a thing?

BY MR. MARGIOTTI: There is such a thing in the
Petition and in the Opinion (651) of the Circuit Court too.

BY JUDGE WATSON: I didn't know it.

BY MR. MARGIOTTI: I will call it to your attention.

Q. Do you know when it is contended by the Petition
that the note was passed, what day?

A. What day —

Q. Yes.

A. The 14th of June.

Q. How did you find that out?

A. How did I find that out—I heard it.

Q. In the Court?

A. Yes.

Q. Where was Mr. Biester when the charge was being
delivered, the charge of the Court?

A. I think he sat at the District Attorney's table.

Q. You think he sat at the District Attorney's table; do
you know?

A. He may have gone over occasionally and sat down at
the attorney's table or chairs where the attorneys sit. He
often does that.

Q. He often does that?

A. Or did.

Q. Do you know whether he did on this case at any time?

A. At times he did sit himself in one of the chairs.

Q. Now during the charge of the Court do you know where Judge Boyer was while Judge Keller was delivering the charge?

A. No, I do not.

Q. Do you remember seeing Judge Boyer?

A. That particular time —

Q. Yes.

(652) A. No.

Q. Do you remember where Mr. Biester was when the Judge said, "Have counsel on either side anything to suggest to the Court?" or words to that effect, almost the close of his charge?

A. To the best of my knowledge, he was seated at the District Attorney's table.

Q. All right; did you hear Mr. Achey say anything?

A. I don't recall.

Q. Did you hear Biester say anything?

A. I don't recall.

Q. Did you see Mr. Biester go to the bench or approach the table in front of the bench shortly after the Judge had made that remark, not immediately—but after having continued with his charge?

A. I have no recollection of that.

Q. You were looking in that direction?

A. Yes sir.

Q. You missed it! Whatever it was you missed?

A. It is six years ago, Mr. Margiotti —

BY MR. VAN ARTSDALEN: I object.

Clarence H. Dinnenhower—Cross

BY JUDGE MURPHY: There is no jury here. We understand the English language. There is no jury here.

BY MR. MARGIOTTI:

Q. What were you going to say about "six years"?

A. I said this happened over six years ago.

Q. What happened?

A. I said I had no recollection of it.

(653) Q. Then it could have occurred without your remembering it?

A. That could be.

Q. Are you still a tipstaff?

A. No sir.

Q. What is your position now?

A. Court Crier.

Q. Do you at the present time have any feeling against this Petitioner?

A. I have no feeling either way —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: If a man has an interest here besides work—we will take it. It is one of the means of testing credibility of every witness in this courtroom, sir.

BY MR. VAN ARTSDALEN: I will withdraw the objection.

BY JUDGE MURPHY: Read the question, Mr. Reporter.

(Question read by the Reporter.)

BY MR. MARGIOTTI:

Clarence H. Dannenhower—Cross

Q. Have you expressed any feeling either way?

A. No.

Q. To no one?

A. To no one.

Q. Mr. Dannenhower, when were you appointed tipstaff?

A. 1941.

Q. And do you know when Mrs. Gwinner was appointed, the lady who died?

A. She was only appointed for that case.

Q. Which case?

(654) A. The Darcy case, I believe. She had served before off and on.

Q. Was she a tipstaff during the Foster-Zietz trial?

A. That I don't recall.

Q. Do you know how many tipstaves there were on the Darcy trial that had acted on the Foster-Zietz trial?

A. Two, I think.

Q. Who were the two?

A. Mr. Gahman and Mrs. Van Sant, I think. That is my best recollection.

BY MR. MARGIOTTI: If the Court please, may I call Your Honor's attention to "Relator's Exhibit No. 1" that "Jessie Gwinner was sworn to attend the jurors during the trials and deliberations in this case."

BY JUDGE MURPHY: There is no doubt about it. She was sworn as soon as they picked the first woman juror.

BY MR. MARGIOTTI: This woman was selected in the Foster-Zietz trial.

BY JUDGE MURPHY: I don't know anything about that.

BY MR. MARGIOTTI: I am calling that to Your Honor's attention as being in the exhibit.

BY JUDGE MURPHY: You are calling the Court's attention to "Relator's Exhibit No. —

BY MR. MARGIOTTI: "No. 1."

BY JUDGE MURPHY: (655) And at page —

BY MR. MARGIOTTI: I would say it is Page 340.

BY JUDGE MURPHY: And at Page 340 of that exhibit you say that Mrs. Gwinner was also a tipstaff in the Foster-Zietz trial?

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: So that if she was a tipstaff at that trial, then there would be three from the Foster-Zietz trial appointed to the Darcy trial?

BY THE WITNESS: That is possible. There may have been only two.

BY MR. MARGIOTTI:

Q. What is that?

A. There may have been only two.

Q. Why do you say "There may have been only two?" I thought you mentioned two and then I have given you Gwinner.

A. Either Mrs. Gwinner may have served with Mr. Gahman and not Mrs. Van Sant on that.

Clarence H. Dannenhoffer - Cross

Q. I see. You are not sure about Mrs. Van Sant?

A. I am not sure about Mrs. Van Sant serving on that.

BY MR. VAN ARTSDALEN: She is here and will be called.

BY JUDGE MURPHY: We will have none of that. Let Mr. Margiotti conduct his examination. Never mind volunteering. Let's get on with this case.

BY MR. MARGIOTTI: (656) I think the Court is right, but I don't mind him giving me some additional information on the side.

BY JUDGE MURPHY: We will have no more aside; let's get on.

BY MR. MARGIOTTI: That is all, Your Honor.

BY MR. VAN ARTSDALEN: That is all.

BY JUDGE MURPHY: Sir, I just want to get one thing — your best recollection. As I understand it, you say that during the Darcy trial there were only three tables on the floor of the courtroom?

BY THE WITNESS: Absolutely.

BY JUDGE MURPHY: Some of the other witnesses say there were six tables—or five or six. You say there were only three?

BY THE WITNESS: There has never been over three in the last thirteen years.

BY JUDGE MURPHY: That is all.

(Witness excused.)

MRS. ETHEL M. VAN SANT, called and sworn on behalf of the Respondent, on direct and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mrs. Van Sant, where do you live?

A. I live in Hulmville in Bucks County.

(657) Q. You are married?

A. Yes sir.

Q. What is your age?

A. I am fifty-three.

Q. What is your present occupation?

A. Tipstaff in the Bucks County Court.

Q. How long have you been tipstaff in the Bucks County Court?

A. I was appointed tipstaff just prior to the Foster-Zietz trial.

Q. Have you been regularly so employed ever since?

A. Yes sir.

Q. Were you one of the tipstaves in charge of the Foster-Zietz jury?

A. Yes sir.

Q. Were you one of the tipstaves in charge of the jury of the David Darcy case?

A. Yes sir.

Q. Do you recall when you were sworn as a tipstaff to assist in the charge of the Darcy jury?

A. My recollection is that it was approximately the second day. My duties were with the jurors prior to their questioning but after the second day, I think it was, I was sworn in.

Ethel M. Van Sant—Direct

BY JUDGE MURPHY: Mrs. Van Sant, you have been around the courthouse long enough to know the Judge has to hear.

BY THE WITNESS: I was afraid to talk too loud.

BY JUDGE MURPHY: Read the question and answer, Mr. Reporter.

(Question and answer read by the Reporter.)

(658) BY MR. VAN ARTSDALEN:

Q. Will you explain a little more fully what your duties were prior to being sworn as one of the tipstaves in charge of the Darcy case?

A. At that time our jury room was on the second floor to the rear of the courtroom. When they came in in the morning the panel was instructed to go to those two rooms —another room adjoining. Other tipstaves and a Deputy was sent up there, it is my recollection, and as their numbers were called I went to the ladies and gave the number and then they were brought downstairs.

Q. Were there separate rooms for the men and ladies upstairs?

A. There was an adjoining room to the ladies' jury room where it is my recollection the men went in there, and the women went in the women's jury room.

Q. Were you or were you not present in the main courtroom during the calling of the jurors on voir dire?

A. No sir; I heard no questioning whatever.

Q. All right. Now after you were sworn as one of the tipstaves in charge of the Darcy jury will you tell the Court, please, just what your duties were and just what you did?

A. My duty with Mrs. Gwinner, who was sworn before me, was to see to the comfort of the jurors, to apply to their needs as they came up. If they needed anything from home, we made the telephone calls to their home.

Q. Will you explain that procedure a little more fully?

A. They were given a paper to write on their needs as they came up. If they needed clean clothing they would write down what they wanted, where they were at home, so that whoever was at home could find those things at home for them, and it was given over the telephone by Mrs. Gwinner or myself to whoever was at (659) home to bring them in.

Q. How were these delivered to the jury?

A. They were brought down and left at the lobby at the hotel.

Q. Was any inspection made by you or any of the tip-staves?

A. Either Mrs., Gwinner or myself would go over the things as they were brought in.

Q. Mrs. Van Sant, will you tell me, please, what arrangements were made for feeding the jury?

BY JUDGE MURPHY: That is when we think of feeding ourselves. It is 12:30. We will recess until 2:00 o'clock.

(Recess.)